

No. 14561

**United States
Court of Appeals
for the Ninth Circuit**

YAKUTAT & SOUTHERN RAILWAY, a Corporation; LIBBY, McNEILL & LIBBY, a Corporation, and BELLINGHAM CANNING COMPANY, a Corporation,

Appellants,

vs.

THE CITY OF YAKUTAT,

Appellee.

Transcript of Record

**Appeal from the District Court
for the District of Alaska
Division Number One**

FILED

JAN 26 1955

PAUL P. O'BRIEN,

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—1-7-55

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

R. E. ROBERTSON,
200 Seward Bldg.,
Juneau, Alaska,
For the Appellants.

WILLIAM L. PAUL, JR.,
P. O. Box 81,
Juneau, Alaska;

FREDERICK PAUL,
755 Dexter Horton Bldg.,
Seattle 4, Washington,
For the Appellee.

In the District Court for the Territory of Alaska,
Division Number One, at Juneau

No. 6734-A

In the Matter of:

The Delinquent Tax Roll of Real and Personal
Property for the City of Yakutat, Alaska, for
the Years 1950 and 1951.

YAKUTAT & SOUTHERN RAILWAY, LIBBY,
McNEIL & LIBBY, and BELLINGHAM
CANNING COMPANY, Each a Corporation,
Objectors.

OBJECTIONS OF YAKUTAT & SOUTHERN
RAILWAY, LIBBY, McNEIL & LIBBY,
AND BELLINGHAM CANNING COMPANY

Yakutat & Southern Railway, a corporation, hereinafter referred to as Railway, is now and during the City of Yakutat's tax year commencing June 1, 1950, hereinafter referred to as 1950, and tax year commencing June 1, 1951, hereinafter referred to as 1951, was the sole owner of real property situated within the City of Yakutat, hereinafter referred to as City, and said Railway and Libby, McNeill & Libby, a corporation, hereinafter referred to as Libby, were during the tax year 1950 the several but not joint owners of various parcels of personalty situated within said City, and said Railway and Bellingham Canning Company, a corporation, hereinafter referred to as Bellingham,

were during the tax year 1951 the several but not joint owners of various parcels of personalty situated within said City; that said Railway, Libby, and Bellingham have a legal and equitable interest, as respectively stated, in said property and in any taxes assessed or levied thereupon during the tax years 1950 and 1951, and, further, Libby, in the sale by it to said Railway of such of said personal property as it owned during said tax year 1950, as well as in the transfer to said Bellingham of the capital stock formerly owned by Libby in said Railway, agreed that it would pay such if any of the City's municipal taxes as might be finally judicially decreed to be unpaid and delinquent against said real property and personal property for the tax year 1950.

Objectors Railway, Libby, and Bellingham, if any or all of said real and personal property is intended to be designated in the statement, reading:

“Delinquent Tax Rolls for the Years 1950 and 1951,
Delinquent from Sept. 15th of Said Years:

“Lot, Block and Description and to Whom Assessed
if Known:

Bellingham Can Co. Land, \$11,000;
Frame Bldgs., \$176,625; Personal,
\$94,000:

Tax 1950	\$2,021.20
1951	1,639.65
Penalty	366.09
Interest	633.54
Total	4,690.48”

in the City's Notice of Delinquent Taxes in the City of Yakutat, Alaska, object to and contest the validity of the assessment and tax on said real and personal property for the tax years 1950 and 1951 and to the granting of an order of sale for said property, or any part thereof, because:

1. City's Board of Trustees did not designate the assessor or any other officer of City to post any notice of the presentation of said delinquent tax roll to this court.

2. The City Clerk did not publish in a daily or weekly newspaper published and printed in the City of Juneau, Alaska, or elsewhere, or post in three conspicuous places within the City of Yakutat, or at all, as required by Section 10 of Ordinance No. 1, entitled "An Ordinance to Provide for the assessment, levy and collection of taxes, and for the sale of property, both real and personal, for the payment of taxes, penalties, interest and costs," approved by the Board of Trustees of the City of Yakutat, Alaska, on July 3, 1948, a notice that the Board of Trustees had fixed the rate of tax levy for either of said tax years 1950 or 1951, designating the number of mills fixed on each dollar of assessed value of the property assessed, and that the taxes were then due and would be delinquent on or before the 15th day of September of either said tax years 1950 or 1951, and that penalty and interest would be charged, and that penalty and interest would be charged as provided in said Ordi-

nance, and the time when and place where payment of taxes might be made, and the amount of discount which would be allowed for payment in full on or before the date specified in said Ordinance.

3. City's Board of Trustees did not designate either the place where or the date when said delinquent tax roll would be presented to this Court.

4. City's Board of Trustees did not in any manner direct the time when said delinquent tax roll should be made up.

5. The City during each of said tax years 1950 and 1951 made its purported assessment and levy of taxes in a lump sum upon both real and personal property without segregation of either or both the items of real and personal property, or, notwithstanding it had knowledge thereof, of the respective several ownerships of Objectors in said property, and notwithstanding it knew Railway was the sole owner of said real property.

6. This proceedings purportedly is instituted under the provisions of Sections 16-1-121 through 16-1-130, ACLA 1949, which do not apply to personal property, but nevertheless both real and personal property and purported taxes thereon are embraced in said roll.

7. City seeks hereby to obtain an order of sale for both real and personal property, intermingled, without segregation thereof, to enforce a purported tax lien thereupon and to collect lump sum taxes,

penalties, and interest, for both the tax years 1950 and 1951, also without segregation of penalties and interest as to those two years and without segregation of the taxes either as to real property and personal property or as to the several individual ownerships by the Objectors of the property as hereinbefore stated, and said delinquent tax roll and said notice embrace, intermingle and commingle, without separate itemization of either, both real and personal property, and said notice states in substance that judgment and order of sale will be applied for to include both real and personal property, and the Court cannot either make such segregation or prorate the alleged delinquent taxes, penalties or interest either to the respective Objectors or to the respective parcels of real and personal property for the purpose of decreeing a tax lien upon and order of sale of said real property, or otherwise, and a tax lien upon or order of sale of personal property to satisfy a tax lien thereupon cannot be had herein in view of the provisions of said Sections 16-1-121 through 16-1-130, *supra*, and the Court cannot segregate the respective taxes, penalty and interest claimed to be delinquent upon the real property and upon the personal property.

8. The delinquent tax roll purports to assess all taxes, penalty, and interest to Bellingham for both tax years 1950 and 1951, notwithstanding the City well knew that Bellingham neither did nor does own the real property but only owned a part of the

personal property since May 2, 1951, and that Libby owned a part of the personal property in the tax year 1950, and that Railway owned all of the real property and part of the personal property in both tax years 1950 and 1951, and notwithstanding Section 16-1-122, *supra*, requires each tract of land shall be assessed to the known owner, and, if the owner is unknown, shall so state.

9. Neither City's clerk nor any other of its officers, within 10 days after the posting of said notice, or at all, mailed to Bellingham, to whom the real property by said delinquent tax roll purportedly is assessed and whose last known and present address is and was well known to said Clerk and City to be Yakutat, Alaska, or to either Railway or Libby, although both of their last known and present addresses are and were well known to said Clerk and City, as required by the last paragraph of Section 16-1-122, *supra*, or otherwise, notwithstanding neither City nor any of its officers published said notice in any newspaper whatsoever, and that neither City, its Clerk, nor other officer posted said notice at four conspicuous places in the City as required by Section 16-1-122, *supra*, notwithstanding said notice was not published in any newspaper.

10. Objectors state that they are informed and believe and therefore allege that City appointed no assessor and that no person took an oath as assessor, nor was any assessment actually made for either of said tax years 1950 or 1951, but that the

assessment for each of those years, notwithstanding changes had been made in said property, its quantity and character, since June 1, 1949, and notwithstanding changes had also been made in said property, its quantity, character and ownership after June 1, 1950, and prior to June 1, 1951, was in substance and effect no more than an adoption of City's lump sum assessment for the tax year, commencing June 1, 1948, of \$281,685.00 for Railway's real property and Railway's and Libby's severally owned personal property then situated in said City, namely: for said tax year of 1950 taxes in the lump sum of \$281,125.00 for Railway's real property and Railway's and Libby's severally owned personal property then situated in said City, and for said year of 1951 taxes in the lump sum of \$281,625.00 for Railway's real property and Railway's and Bellingham's severally owned personal property then situated in said City, and was not based upon any evidence but to the contrary ignored the evidence that Railway's real property for each of the tax years 1950 and 1951 was of the true and full value of \$99,000.00 and its personal property for each of said tax year of the true and full value of \$7,200.00, and that Libby's personal property for said tax year of 1950 was of the true and full value of \$49,100.00, and that Bellingham's personal property for said tax year of 1951 was of the true and full value of \$76,603.00; that said delinquent tax roll does not segregate the respective assessments for said tax years 1950 and 1951 or state whether the purported as-

sessments therein refer to one, if so which one, or to both of said tax years, and does not describe either the real property or the personal property that is purported to be assessed.

11. City's purported assessments for each of said tax years 1950 and 1951 are not based upon evidence but were made in bad faith and not upon the true and full value of said respective properties and without their being equalized in accordance with valuations and similarly in method to valuations assessed against other properties of other property owners, or at all, but disproportionately high compared to valuations placed upon other taxpayers' properties, and without City's Board of Trustees in good faith sitting (nor, in 1950, at all), as a board of equalization and in good faith listening to, considering the evidence, equalizing and adjusting Objectors' complaints of the invalidity and unjustness in accordance with Section 6 of said City's Ordinance No. 1, *supra*, or otherwise, and in utter disregard that said properties, as City and its Board of Trustees and other officers well knew, are only valuable for the special use of a salmon cannery and were not so operated during the fishing season of 1950, and said purported assessments are and were fraudulent in that they were purposely made too high and excessive, i.e.: for the tax year 1950 by \$125,825.00 over the combined true and full value of said property and for the tax year 1951 by \$98,822.00 over the combined true and full value

of said properties, with a view of casting an undue proportion of the public burdens on these Objectors and were made in pursuance to rules of valuation, in utter disregard of the evidence, that were designed to operate unequally in the distribution of City's municipal taxation and to discriminate against these objectors, and purposely to impose upon them more than their respective just proportion of the public burden.

12. The combined true and full value of Railway's real and personal property and of Libby's personal property then situated in the City for the tax year 1950 was \$155,300.00, and the City's purported assessment of that property at \$281,125.00 is excessive by \$125,825.00; that on February 2, 1951, Libby on behalf of Railway paid to City \$1,699.20 in full payment of said 1950 taxes computed at the levy rate of 16 mills upon the true and full value of Railway's real property of \$99,000.00 and of personal property of \$7,200.00, and on behalf of itself \$785.60 in full payment of said 1950 taxes on Libby's personal property computed at the levy rate of 16 mills upon the true and full value of its personal property of \$49,100.00; that, notwithstanding the City, its trustees and Treasurer knew that said payments were so made, the City retained said payments for its own benefit and has never returned or offered to return any part thereof.

13. The combined true and full value of Railway's real and personal property and of Belling-

ham's personal property then situated in the City for the tax year 1951 was \$182,803.00, and that the City's purported assessment of that property at \$281,625.00 is excessive by \$98,822.00; that on or about December 7, 1951, Bellingham on behalf of Railway paid to City in full payment of said 1951 taxes \$1,665.22 computed at the levy rate of 16 mills upon the true and full value of Railway's real property of \$99,000.00 and personal property of \$7,200.00 and on behalf of itself \$1,201.13 computed at the levy rate of 16 mills upon the true and full value of its personal property of \$76,603.00; that in computing said payments a 2% discount was taken for payment in full before they became delinquent; that, notwithstanding City, its trustees and its treasurer knew that said payments were so made, the City retained said payments for its own benefit and has never returned or offered to return any part thereof.

Wherefore Objectors pray that the City's application for judgment and order of sale may be denied, and that Objectors may be given sufficient time to adduce evidence in support of these Objections, and that all of the City's records pertaining to municipal taxation for the tax years 1950 and 1951 may be immediately impounded in the custody of the Clerk of the Court, and that a day certain may be set for the hearing of these Objections so that Objectors may have opportunity to produce its evidence both orally and by deposition, and that no hearing may be had upon the City's application in the meantime.

Dated at Juneau, Alaska, September 8, 1952.

ROBERTSON, MONAGLE &
EASTAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

Duly verified.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 8, 1952.

Robertson, Monagle & Eastaugh
Attorneys at Law

September 8, 1952.

Honorable George W. Folta,
Judge of the District Court,
P. O. Box 1721,
Juneau, Alaska.

Dear Judge:

Recently I learned that the City of Yakutat intended on the 9th instant to present a purported delinquent tax roll for the years 1950 and 1951. No specific time of such presentation other than the date was given, and as yet neither the delinquent tax roll nor an application for judgment and order of sale has been filed with the Clerk of the District Court.

The statute makes no specific provision by which objectors can file their objections in advance.

Today I have served upon William L. Paul, Jr., attorney for the City of Yakutat, and deposited with the Clerk the objections of Yakutat & South-

ern Railway, Libby, McNeill & Libby, and Bellingham Canning Company to these contemplated proceedings.

My clients desire a hearing at which they can produce their evidence, but some little time will be required to obtain the evidence, both orally and by deposition, so I request that no hearing be held at the present time or without first giving me at least two or three weeks advance notice because I doubtless will have to take depositions in Chicago; but I know of no procedure by which I could do so before the application and delinquent tax roll are filed with the Clerk.

I am giving Mr. Paul a copy of this letter and am also submitting a copy of it to the Clerk with the original objections.

Yours very truly,

R. E. ROBERTSON,
Attorney-at-Law,
Juneau, Alaska.

RER:er

CC w/encl: Clerk of the District Court
William L. Paul, Jr., 9/8/1952.

To the Clerk: Will you please file this in the case when Paul files his application or delinquent tax roll. So it will be officially filed, I enclose filing fee of 25 cents cash.

/s/ R. E. ROBERTSON.

[Title of District Court and Cause.]

APPLICATION

Your applicant, the City of Yakutat, respectfully submits the attached duplicate delinquent tax rolls for the City of Yakutat for the years 1950 and 1951, which clearly show the various parcels of property within the territorial limits of said city, on which taxes were duly and regularly levied but not collected and which taxes are unpaid for the years 1950 and 1951. Said duplicate delinquent tax rolls also show the names of the owners or reputed owners of each parcel, the amount of taxes levied, unpaid and due for each such parcel or tract for said years, the penalties and interest as provided by the ordinance of the said City and by law due on each of said parcels.

Notice of this application for order of sale was duly posted. Applicant is a second class city of less than one thousand five hundred population, and has no newspaper.

Wherefore, your applicant prays that an order issue that each of said parcels and tracts be sold at public auction in the manner prescribed by law to satisfy and discharge the lien of taxes, penalties, interest and costs; that the court make an order directing said payments to be made; and such further order as is meet in the premises.

Application October 15, 1952.

/s/ WILLIAM L. PAUL, JR.,

Attorney for the City of
Yakutat.

PLAINTIFF'S EXHIBIT No. 1

Notice of Delinquent Taxes on Real Property in the
City of Yakutat, Alaska

To Whom It May Concern:

Notice is hereby given that the delinquent tax roll of real property and personal property for the City of Yakutat, Alaska, for the years 1950 and 1951 has been completed and is now open for public inspection at the office of the City Clerk and that same will be presented to the District Court of the Territory of Alaska, Division No. 1, at Juneau on the 9th day of Sept., 1952, or as soon thereafter as the same can be heard for judgment of order and sale.

The following list shows the tracts as shown by said delinquent tax roll, the amount of tax, interest, penalty and to whom assessed:

“Delinquent Tax Rolls for the Years 1950 and 1951,
Delinquent from Sept. 15th of Said Years:

“Lot, Block and Description and to Whom Assessed
If Known:

Bellingham Can Co. Land, \$11,000;
Frame Bldgs., \$176,625; Personal,
\$94,000:

Tax 1950	\$2,021.20
1951	1,639.65
Penalty	366.09
Interest	633.54

Total\$4,690.48”

Received in Evidence: May 10, 1954.

Certificate of Delinquent Tax Roll

I, John G. Williams, Jr., Clerk of the City of Yakutat, Alaska, do hereby certify that the foregoing roll is a true and correct roll of the delinquent real property taxes of said City, for the years therein set forth, except

American Can Co. property valuations being in the process of being made.

and that all of said taxes are due and that they respectively became delinquent the respective dates as in said roll stated, and that the total amount of delinquent taxes, interest and penalty, together with the aggregate of the whole thereof assessed against each separate tract and property for each of said years for which the taxes assessed against each tract and property are due and delinquent are shown in the foregoing roll, together with the total of all such past due and delinquent taxes, interest and penalty, separately stated and the aggregate of the whole thereof; that no part of said taxes, interest or penalty have been paid.

During the time of publication and notice and up to the time of the order of sale referred to any person may appear and make payment on any piece or tract of property set forth herein, together with the penalty and interest and the Clerk or other officer shall make proper notice of such payment on both the original and duplicate delinquent tax roll.

In Witness Whereof I have hereunto set my

hand and the corporate seal of said City this 9th day of August, 1952, at Yakutat, Alaska.

/s/ JOHN G. WILLIAMS, JR.,
City Clerk.

[Endorsed]: Filed October 15, 1952.

[Title of District Court and Cause.]

NOTICE OF TAKING OF DEPOSITIONS
UNDER RULE 30

To the Applicant City of Yakutat, Alaska, and Its
Attorney William L. Paul, Jr.:

You are hereby notified that the Objectors Yakutat & Southern Railway, Libby, McNeill & Libby, and Bellingham Canning Company, will take the depositions, upon oral examination, of the following persons at the respective times and places mentioned, namely: Jeanice M. Walton, business name Jeanice M. Welsh; Robert Welsh; and M. C. Bristol, in the office of the Icy Straits Salmon Company, 219 Herald Building, Bellingham, Washington, at 10:00 o'clock a.m., on November 20, 1952; H. G. Heaton in the offices of Attorneys Holman, Mickelwait, Marion, Black & Perkins, 1006 Hoge Building, Seattle, Washington, at 10:00 o'clock a.m., on November 21, 1952.

Each of said depositions will be taken before a disinterested Notary Public who is not a relative, employee, attorney or counsel of any of the parties

or of said witnesses, nor a relative or employee of such attorney or counsel, nor financially interested in this proceedings, and said testimony will be taken stenographically before a disinterested court reporter or stenographer.

Service of this notice is made upon you by mailing a copy thereof on this date in a sealed envelope, postage prepaid, addressed to Attorney William L. Paul, Jr., Post Office Box 81, Juneau, Alaska.

Hereof take due notice.

Dated at Juneau, Alaska, November 5, 1952.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

[Endorsed]: Filed November 6, 1952.

[Title of District Court and Cause.]

ORDER

The application of the City of Yakutat for an order of sale of real property on which taxes are delinquent for the years 1950 and 1951 having been heretofore made, and such application now coming before the Court for said order concerning those tracts and parcels of realty about which no objections have been filed, namely, all tracts and parcels except those of Libby, McNeill & Libby, Yakutat and Southern Railway, and Bellingham Canning Co.; and it appearing satisfactorily to the Court that

the Clerk of applicant made up the duplicate delinquent tax rolls for the said years, he being the person so authorized to do and duly posted the same within the provisions of Section 16-1-123 ACLA 1949, with notices to the delinquent taxpayers, with notice of the presentation of said rolls to this Court on September 9, 1952, for order of sale of real property described on said rolls, and good cause appearing in the premises, it is——

Ordered that the real property described in said rolls, except that of Libby, McNeill & Libby, Yakutat & Southern Railway, and Bellingham Canning Co., be sold at public auction at the City Hall (akn ANB Hall), in the City of Yakutat, Alaska, in the manner prescribed by law, commencing at the hour of 10 a.m., December 12, 1952, between the hours of 10 a.m. and 4 p.m., after 30 days' notice of such sale; nevertheless exempting from such sale such tracts and parcels for which taxes, penalty, interest and costs have been paid prior thereto; and applicant's costs herein to be taxed by the Clerk of this Court including an attorney's fee of \$250.00.

Done at Ketchikan, Alaska, this November 7th, 1952.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed November 7, 1952.

[Title of District Court and Cause.]

MINUTE ORDER FRIDAY, NOVEMBER 7, 1952

There appeared Wm. L. Paul, Jr., who presented to the court, and Order for the Sale of Real Property in the City of Yakutat, for delinquent taxes. Said order did not run as to those properties on which R. E. Robertson, Attorney for protestants, had filed a protest. With the court being fully informed the said order was signed with an attorney fee of \$250 being allowed.

[Title of District Court and Cause.]

MINUTE ORDERS IN No. 6734-A

Minute Order Dated Friday, Nov. 7, 1952, as entered in Journal No. 21, Page 33

There appeared William L. Paul, Jr., who presented to the court, an Order for the Sale of Real Property in the City of Yakutat, for delinquent taxes. Said Order did not run as those properties on which R. E. Robertson, Attorney for protestants, had filed a protest. With the Court being fully informed the said order was signed with an attorney fee of \$250 being allowed.

Minute Order Dated Friday, December 19, 1952, as entered in Journal No. 21, Page 65

This case came on for hearing of objectors' Motion for Production of Documents. William L. Paul, Jr., for City of Yakutat; R. E. Robertson for

Objectors. After argument of counsel, the Court granted the motion. Objectors offered to pay the transportation expense of the records.

Minute Order Dated Monday, December 22, 1952, as entered in Journal No. 21, Page 68.

This case was called up by the Objectors for setting down for hearing, their Motion for Default of the Applicant for failure to Answer Interrogatories, and also on an application of the Applicant for an extension of time in which to answer the Objectors Interrogatories. William L. Paul, Jr., for Applicant; R. E. Robertson for Objectors. Mr. Paul stated that he had filed and served Applicant's Answers to the Interrogatories this morning. Mr. Robertson still wished to argue his motion for entry of default, so the matter was set for December 29th.

Minute Order Dated Monday, December 29, 1952, as entered in Journal No. 21, Page 80

This case came before the court for hearing on Objectors' Motion for entry of Judgment by Default, on Petitioner's Motion for an Extension of Time to answer Interrogatories and on Objectors' Motion to Strike motion for extension and to strike Petitioner's answers to Objectors' Request for Admission. William L. Paul, Jr., for Petitioner; R. E. Robertson for Objectors. Counsel presented their arguments and the matter was taken under advisement.

Later this day the court ruled as follows: Objectors' motions for default and to strike are denied.

Treating Petitioner's motion for Extension of Time as a Motion to allow filing of Answers to Interrogatories. Motion is granted.

Minute Order Dated March 27, 1953, as entered in Journal No. 21, Page 118

This matter came before the court for argument on Objectors' Motion to suppress Applicant's answers to Objectors' Interrogatories. William L. Paul, Jr., for Applicants; R. E. Robertson for Objectors. The motion was sustained except as to Answer No. 4. Respondent was granted 2 weeks to respond with proper answers.

Minute Order Dated Friday, April 23, 1954, as entered in Journal No. 21, Page 428

Upon the calling up of this case for hearing on a Motion to set for trial, and a Motion for Judgment on Pleadings, Mr. Paul moved for this case to be set over and a day set for hearing, Mr. Robertson concurred. It was set for hearing on Wednesday, April 28th.

Minute Order Dated Wednesday, April 28, 1954, as entered in Journal No. 21, Page 434

This case came before the court for hearing on a Motion to Set for Trial and for Motion for Summary Judgment. Wm. L. Paul, Jr., for Applicants; R. E. Robertson for Protestants. Counsel presented their arguments following which the court took the matter under advisement. In Cause No. 6581-A the Court set Mr. Robertson's Motion for Judgment on the Mandate for hearing on the next Motion Day.

Minute Order Dated Friday, April 30, 1954, as entered in Journal No. 21, Page 438

The Court having heard counsels' arguments on the Motions herein, at this time ruled that said motions for Judgment would be denied.

Minute Order Dated Tuesday, May 10, 1954, as entered in Journal No. 21, Page 445

This matter came on for trial before the Court. Wm. L. Paul, Jr., appeared for Petitioner, City of Yakutat. R. E. Robertson appeared for Objectors Libby, McNeil & Libby, Yakutat & Southern Ry. and Bellingham Canning Co. Petitioner proceeded by calling Dorothy Henry, City Clerk of Yakutat, who was sworn. The Duplicate Delinquent Tax Roll for the City of Yakutat for the years 1950 and 1951 was offered in evidence to which Mr. Robertson objected. After argument it was admitted in evidence as subject to the objection. Page 5 of the Assessment Book was admitted as Exhibit 2, with leave to substitute a photostatic copy in lieu of the original page. Petitioners stipulated that Protestants' objections, Nos. 1, 3, 4, and 9 were admitted. Edward G. Johnson's Amended Answers to interrogatories dated Nov. 21, 1952, were admitted in evidence. Counsel stipulated that Objectors' witnesses would testify that the value of the properties of the objectors hereto would be the same as reflected by paragraph 10 of the objections. It was stipulated that as of June 1, 1950, Bellingham Canning Company did not own any property subject to tax, in Yakutat, and that its interest was acquired May 5,

1951. It was also stipulated that at the time of purchase, the Bellingham Canning Company paid \$120,000 to Libby, McNeil & Libby for all the physical assets in the City of Yakutat. It was stipulated that Answer to objection Request for admission of Nos. 22, 23, 24, 25, and 26 were admitted in evidence. Upon the completion of the examination of the witness Dorothy Henry, Petitioner rested. Mr. Robertson moved, in behalf of the Objectors, for dismissal of Petitioner's case. Ruling was reserved.

Minute Order Made on Wednesday, June 16, 1954,
as entered in Journal No. 21, Page 456

At this time the Court signed a Memorandum Decision in this case.

Minute Order Made on Thursday, June 24, 1954, as
entered in Journal No. 21, Page 462

At this time this matter came on for hearing. William L. Paul, Jr., was present for Plaintiff; R. E. Robertson for Objectors. Mr. Robertson filed Objections to Findings of Fact, Conclusions of Law, Order of Sale and Cost Bill. After discussion, Mr. Paul asked the Court for time until 2 p.m., to submit authorities on Objections, which the Court granted.

Minute Order Made on Friday, June 25, 1954, as
entered in Journal No. 21, Page 463

This matter having been heard yesterday on Objections to Findings of Fact, Conclusions of Law,

Order of Sale, and Cost Bill filed by R. E. Robertson, the Court ruled that the objections of the taxpayers to the allowance of interest on penalties and of a fee to the City Clerk, are sustained and all other objections are overruled.

[Title of District Court and Cause.]

BILL OF COSTS

Judgment having been entered in the above-entitled action on the .. day of November, 1952, against certain tracts and parcels of property at Yakutat the clerk is requested to tax the following as costs:

Fees of the Clerk.....	\$ 21.00
Applicant's attorney's fees allowed by Court	250.00
Cost of posting notices of hearing.....	3.00
<hr/>	
Total	\$274.00

United States of America,
Territory of Alaska—ss.

I, William L. Paul, Jr., do hereby swear that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day mailed to with postage fully prepaid thereon.

/s/ WILLIAM L. PAUL, JR.,
Attorney for Applicant.

Subscribed and sworn to before me this 10th day of November, A.D. 1952, at Ketchikan, Alaska.

[Seal] /s/ IRENE R. ERICKSON,
Deputy Clerk.

Costs are hereby taxed in the amount of \$274.00 this 10th day of November, 1952, and that amount included in the judgment.

[Seal] J. W. LEIVERS,
Clerk;

By /s/ IRENE R. ERICKSON,
Deputy Clerk.

[Endorsed]: Filed November 10, 1952.

[Title of District Court and Cause.]

OBJECTORS' REQUEST UNDER RULE 36
FOR ADMISSIONS BY APPLICANT

Objectors Yakutat & Southern Railway, Libby, McNeill & Libby, and Bellingham Canning Company request applicant The City of Yakutat, Alaska, within ten days after service of this request to admit, for the purpose of this proceedings only and subject to all pertinent objections to admissibility which may be interposed at the hearing, that each of the following statements is true:

1. The official minutes and record book of applicant's Board of Trustees and Board of Equalization commencing with and including October 2,

1948, and running through and including October 6, 1952, do not show or state that any assessor was appointed for the tax year commencing June 1, 1950.

2. The official minutes and record book of applicant's Board of Trustees and Board of Equalization commencing with and including October 2, 1948, and running through and including October 6, 1952, do not show or state that any assessor was appointed for the tax year commencing June 1, 1951.

3. The official minute and record book of applicant's Board of Trustees and Board of Equalization, commencing with and including October 2, 1948, and running through and including October 6, 1952, do not show or state that any person ever took an oath of office as assessor.

4. The only entries or statements, substantially or verbatim, relative to or mentioning an assessor entered or appearing in the official minutes and record book of applicant's Board of Trustees and Board of Equalization, commencing with and including October 2, 1948, and running through and including October 6, 1952, are the following:

a. Page 56, dated October 11, 1948: Telegram from Libby's attorney, Mr. R. E. Robertson, was read at this meeting. The telegram was in protest of the Libby's property valuation as set by the assessor.

b. Pages 63-64, dated March 12, 1949: The Mayor explain about Libby's property tax situation. Mayor ask the Board of Trustees if they wish to hire expert city assessor from Juneau to assess the property of Libby, McNeill, if Libby fail to pay the balance of tax which they owe to the City of Yakutat, by March 15, 1949. Those that voted in favor of bringing up a qualified assessor were, Mr. Ben Peterson, Harry Bremner, Sr., Mrs. Esther Bremner, Mrs. Helen Bremner, Mr. John Ellis and Mr. J. B. Mallott.

A Resolution to authorize \$350.00 and not over is proposed for the expense of the assessor. (Resolution No. 16.) The entire five members of the Board of Trustees voted in favor of the proposed resolution number 16.

c. Page 72, undated: Assessor was advised to assess the property of Mr. and Mrs. Simons.

d. Page 80, undated: The assessor, Mr. Sheldon James, Jr.

e. Pages 91-92, dated June 6, 1950: It was moved and seconded to accept David Abraham as City Assessor. Motion was carried.

f. Page 100, dated November 3, 1950: Before Mayor and Trustee Mrs. Simons was present and made protest, value set on buildings and personal property by assessor out of reason * * *

g. Pages 101-104, dated Nov. 6, 1950: John Williams to act as assessor until removed from office, appointed by City Mayor.

h. Pages 104-106, dated Nov. 7, 1950: Edward Rener says he transferred property to Melvin Rener, also that he had told the former assessor Mr. Hamilton of this change.

5. The only entries or statements mentioning or relative to assessment of taxes against property of either Bellingham Canning Company, Yakutat & Southern Railway, or Libby, McNeill & Libby, entered or appearing in the official minutes and record book of applicant's Board of Trustees and Board of Equalization, commencing with and including October 2, 1948, and running through and including October 6, 1952, are the following:

a. Page 56, dated October 11, 1948: Telegram from Libby's attorney, Mr. R. E. Robertson, was read at this meeting. The Telegram was in protest of the Libby's property valuation as set by the assessor.

b. Pages 63-64, dated March 12, 1949: The Mayor explain about the Libby's property tax situation. Mayor ask the Board of Trustees if they wish to hire expert city assessor from Juneau to assess the property of Libby, McNeill, if Libby fail to pay the balance of tax which they owe to the City of Yakutat, by March 15, 1949. Those that voted in favor of bringing up a qualified assessor were: Mr. Ben Peterson, Harry Bremner, Sr., Mrs. Esther Bremner, Mrs. Helen Bremner, Mr. John Ellis and Mr. J. B. Mallott.

A Resolution to authorize \$350.00 and not over is proposed for the expense of the assessor. (Resolu-

tion No. 16.) The entire five members of the Board of Trustees voted in favor of the proposed resolution number 16.

c. Pages 85-86, dated April 6, 1950: A letter concerning Libby's city tax question was also read.

Herbert Bremner moved that the City Board of Trustees authorize Mr. William L. Paul, Jr., City Attorney, to proceed in court action entitled: "City versus Libby, McNeill & Libby." Motion was seconded by Ben Peterson. Motion was carried with the following members voting yes: Ben Peterson, John Ellis, Helen Bremner, Esther Bremner, Jack Ellis and Herbert Bremner. There was no contrary vote.

Herbert Bremner moved that we pay City Attorney William L. Paul, Jr., on a flat rate basis of 12 per cent of principal and interest and penalty plus attorney's fee allowed by the court. Seconded by Mr. Ben Peterson. Motion carried unanimously.

John Ellis moved that the City Treasurer be authorized to pay the \$21.00 to file in court and Marshal's fee of \$3.10. Motion was seconded by Ben Peterson. Motion carried.

d. Pages 133-137, dated Feb. 6, 1951: Mayor read letter from Robertson, attorney for Libby, McNeill & Libby, the contents of letter in part from Robertson as follows: Two checks made out for taxes for 1950 for Libby, McNeill & Libby. These checks (No. 64131 University Branch, No. 64130 Nat'l Bank of Commerce dated 1/30/51, one for

\$785.60, one \$1,699.25), were indorsed for deposit only in the First National Bank by Mayor Mallott and sent to William Paul, Jr., to be photographed.

e. Pages 143-146, dated April 30, 1951: Next order of business is a letter written from William Paul, Jr., pertaining to the case of City of Yakutat versus Libby, McNeill & Libby.

Discussion taken on the question "City of Yakutat versus Libby's," sending of a witness to testify on behalf of the City.

J. B. Mallott authorized to take records of City of Yakutat to appear as a witness on behalf of City.

Witness granted \$13.00 per day for five days, \$68.10 for fare and cab service.

f. Pages 147-150, dated June 4, 1951. Judge Folta hasn't rendered a decision on the court case of City of Yakutat vs. Libby's.

Letters have been read by the Mayor. Public Works, Assessing Bellingham property.

g. Pages 157-159, dated October 8, 1951, Mayor reads communication from William L. Paul, Jr., about the tax case of Yakutat vs. Libby, McNeill & Libby.

h. Pages 162-163, dated October 30, 1951: Bellingham Canning Co. has been opened for discussion. With Mr. Bristol & Mrs. Welsh present.

Mr. Bristol asks the Board what the value is—What Felix Toner says? Or what the real value is?

Store inv. \$42,235.00. Stock Room inventory \$35,568.00 as given by Mr. Bristol. Mrs. Welsh presented to the Board \$125,000.00 for Yakutat & Southern Railway and \$77,803.00 for inventory of the Store & Stockroom. Out of the \$125,000.00 there is \$25,000.00 which is outside of the city limit of Yakutat and is non-taxable.

This is the true value as stated by Mrs. Welsh and Mr. Bristol of Bellingham Canning Co. But this does not include a light plant—second hand, a value of \$5,000.00 as given by Mrs. Welsh. Increasing the value of Bellingham to \$182,803.00.

Bellingham Canning Co. presents \$182,803.00 for their property as a starting point for this tax roll for this year and next year there may be improvement added. It has been stated by Bellingham that it is their wish to come to a fair value on their property and to stay out of court action.

It is up to the Board of Equalization on whether to accept the true value on Bellingham Canning Co.'s property as presented by Mrs. Welsh and Mr. Bristol.

i. Pages 164-165, dated Nov. 12, 1951. The Board next takes up Bellingham Canning Property. Discussion taken on Bellingham Canning Co.

It has been brought out that this case against the property of Bellingham Canning Co., which was formerly owned by Libby's is already in court and whatever the judges decide on this case will be

final. The Board decided that the property on Bellingham Canning Co., remains the same as set in the two last years, at \$281,625.00, as follows: Land, \$11,000.00; \$176,125.00 for buildings; \$94,000.00 for personal.

j. Pages 184-187, dated April 7, 1952: Bellingham will not sell any surplus electricity to the U. B. The city has taxed Bellingham property unjustly.

Councilman Whiting stated his view on the above question as follows: It is just like baiting a dog with a hunk of meat, they seem to be trying to have the city lower their taxes, but which can't be done.

Mayor Mallott presents more information on electricity and taxes on cannery. We haven't assessed Bellingham on their cannery machinery, which \$75 thousand per line.

k. Pages 198-200, dated Oct. 3, 1952: Be it resolved that the Mayor and city attorney that settlement on the property valuation and taxes for the years of 1950-51-52 on this basis the difference in valuation between the city and Co. be split, plus that Bellingham at its own expense employ American Appraiser Co. or some other company to appraise the entire plant and that the appraisal for the American Can Co. be fixed at the same figure as for Craig namely 30 thousand per line.

Motion carried.

6. The official minutes of the meeting under date of October 30, 1951, of applicant's Board of Equalization show the following entry:

Bellingham Canning Co. has been opened for discussion. With Mr. Bristol and Mrs. Welsh present.

Mr. Bristol asks the Board what the value is—What Felix Toner says? Or what the real value is?

Store inv. \$42,235.00. Stock Room inventory \$35,568.00 as given by Mr. Bristol. Mrs. Welsh presented to the Board \$125,000.00 for Yakutat & Southern Railway and \$77,803.00 for inventory of the Store & Stockroom. Out of the \$125,000 there is \$25,000.00 which is outside of the city limit of Yakutat and is non-taxable.

This is the true value as stated by Mrs. Welsh and Mr. Bristol of Bellingham Canning Co. But this does not include a light plant—second-hand, a value of \$5,000.00 as given by Mrs. Welsh. Increasing the value of Bellingham to \$182,803.00.

Bellingham Canning Co. presents \$182,803.00 for their property as a starting point for this tax roll for this year and next year there may be improvement added. It has been stated by Bellingham that it is their wish to come to a fair value on their property and to stay out of court action.

It is up to the Board of Equalization on whether to accept the true value on Bellingham Canning Co.'s property as presented by Mrs. Welsh and Mr. Bristol.

7. The official minutes of the meeting under date of November 12, 1951, of applicant's Board of Equalization show the following:

The board next takes up Bellingham Canning property. Discussion taken on Bellingham Canning Co.

It has been brought out that this case against the property of Bellingham Canning Co. which was formerly owned by Libby's is already in court and whatever the Judges decide on this case will be final. The Board decides that the property on Bellingham Canning Co. remains the same as set in the two last years, at \$281,625.00 as follows: Land, \$11,000.00; \$176,125.00 for buildings, \$94,000.00 for personal.

Mill rate remains the same as last year at 16 mills.

8. The official minutes of the meeting under date of April 7, 1952, of applicant's Board of Trustees shows the following:

First order of business is report of the results of meeting with Bellingham for surplus electricity, as given by Mr. Hamilton, a member of the Utilities Board. A maximum of 25 KW for summer and 75 KW for winter. Bellingham to sell to Utility Board with a cut-off at Bellingham. The Utility Board to pay for only what is used. Hamilton reported to the Board of Trustees of a letter received from Bellingham contains in part as follows: Bellingham will not sell any surplus electricity to the U.B. The city has taxed Bellingham property unjustly.

Councilman Whiting stated his view on the above question as follows: It is just like baiting a dog

with a hunk of meat, they seem to be trying to have the city lower their taxes, but which can't be done.

Mayor Mallott presents more information on electricity and taxes on cannery. We haven't assessed Bellingham on their cannery machinery, which \$75 thousand per line.

9. The official minutes of the meeting under date of October 3, 1952, of applicant's Board of Trustees shows the following:

Be it resolved that the Mayor and city attorney that settlement on the property valuation and taxes for the years of 1950-51-52 on this bases the difference in valuation between the city and co. be split, plus that Bellingham at its own expense employ American Appraiser Co. or some other co. to appraise the entire plant and that the appraisal for the American Can Co. be fixed at the same figure as for Craig, namely 30 thousand per line.

Motion carried.

10. Objector Libby, McNeill & Libby closed its Yakutat salmon cannery at the end of the 1948 salmon fishing season and neither the land, the various salmon cannery buildings, equipment nor machinery were used for salmon canning purposes again until the 1951 salmon fishing season.

11. Subsequent to the 1948 salmon fishing season and prior to June 1, 1949, Libby, McNeill & Libby had decided to cease operating a salmon cannery at

Yakutat, and reduced the inventory of its stock and supplies, which reduction was maintained thereafter up and until after January 1, 1951.

12. Subsequent to the 1948 salmon fishing season and prior to June 1, 1949, Libby, McNeill & Libby removed from the town of Yakutat, Alaska, two Star boats, 3 Y boats, skiffs, fishing gear, canning machinery and equipment, a house, 3 bunkhouses, part of the building that had been formerly used as a web room, pipe room and machine shop, and stripped its cannery plant of most of its equipment, and did not return any of said property or similar property to Yakutat until after January 1, 1951.

13. Libby, McNeill & Libby on or about May 3, 1951, sold to the Bellingham Canning Company for the sum of \$120,000.00 all of the former's personal property then situated in the city of Yakutat, Alaska, and transferred to the Bellingham Canning Company all capital stock previously owned by Libby, McNeill & Libby in the Yakutat & Southern Railway, which transfer included the entire Yakutat & Southern Railway railroad system, all of its capital assets, land, railroad trackage, railroad rights-of-way, buildings, and personal property situated both within and without the town of Yakutat, Alaska, and also a tract of land known as U.S. Survey No. 179, consisting of 160 acres and situated entirely outside the boundaries of the City of Yakutat, Alaska, but said sale did not include the inventory of the stock of supplies and in trade on hand for which was paid an additional agreed con-

sideration of \$105,000.00 which included \$9,500.00 of accounts receivable and all supplies and inventory brought into the town of Yakutat, Alaska, after January 1, 1951, by Libby, McNeill & Libby for use during its then intended 1951 salmon cannery operations but which \$105,000.00 was subject to adjustment by check of inventory.

14. Throughout the tax years of 1950 and 1951 the Objector Yakutat & Southern Railway was the owner of the land, known as U.S. Survey No. 2881, situated within the Applicant's municipal boundaries, and of the building and railroad trackage situated on that land and the adjacent, abutting tideland.

15. At no time during either the tax years 1950 and 1951, did Objector Libby, McNeill & Libby own any of the land, known as U.S. Survey No. 2881, or the buildings or railroad trackage situated on that land, within the town of Yakutat.

16. At no time during either the tax years 1950 or 1951, did Objector Bellingham Canning Company own any of the land, known as U.S. Survey No. 2881, or the buildings or railroad trackage situated on that land, within the town of Yakutat.

17. Libby, McNeill & Libby did not own during the tax year 1951 or on June 1, 1951, any personal property situated in Applicant municipality.

18. Bellingham Canning Company did not own on June 1, 1950, or at any time, except from May 3, 1951, to June 30, 1951, during the tax year 1950,

any personal property situated in Applicant municipality.

19. The land, known as U.S. Survey No. 2881, was situated within applicant municipality throughout the tax years 1950 and 1951.

20. Part of the Yakutat & Southern Railway's dock in Yakutat, Alaska, was removed in the fall of 1950 because it was so in need of repairs that it was of no value and was a liability, and had been in need of such repairs since prior to June 1, 1950.

21. Applicant's Ordinance No. 1 was in effect throughout tax years 1950 and 1951.

22. With his letter of February 1, 1951, to applicant's City Clerk, Attorney Robertson, on behalf of Libby, McNeill & Libby and the Yakutat & Southern Railway Company, enclosed Libby, McNeill & Libby's check for \$1699.20 for 1950 taxes on the Yakutat property of the Yakutat & Southern Railway at the rate of 16 mills upon a valuation of \$106,200.00, and Libby, McNeill & Libby's check for \$785.60 for 1950 taxes upon its property at 16 mills upon a valuation of \$49,100.00, which letter reads as follows:

February 1, 1951.

Airmail—Registered

Return Receipt Requested

City Clerk, Yakutat, Alaska

Dear Sir:

Referring to my letter of the 20th ultimo, to which you have not yet replied, relative to the undated

tax bill which was recently received by Libby, McNeill & Libby from you in which was listed the following property and taxes, namely:

Land	\$ 11,000.00	Tax \$ 176.00
Improvements ...	176,125.00	2818.00
Personal	94,000.00	1504.00
<hr/>		<hr/>
Totals.....	\$281,125.00	\$4498.00

Presumably these taxes cover the property of both Libby, McNeill & Libby and the Yakutat & Southern Railway and which you have failed to segregate and tax against the respective property owners for which reason you are hereby notified that my clients contend they are illegal, also that no proper or sufficient, if any, notice was given of the meeting, if any, of your Board of Equalization.

My clients further protest and maintain that these taxes are unreasonably high as compared with taxes levied on other people's property and that the valuations are not the actual fair or cash valuations of their properties; but that the actual fair cash value of Libby, McNeill & Libby's property within your town on June 1, 1950, was \$49,100.00, and of the Yakutat & Southern Railway on that date was \$106,200.00.

I enclose herewith check of Libby, McNeill & Libby in favor of the City of Yakutat for \$1699.20 in full payment of the 1950 taxes on the Yakutat property of the Yakutat & Southern Railway at the rate of 16 mills upon a valuation of \$106,200.00,

and also the check of Libby, McNeill & Libby in favor of the City of Yakutat for \$785.60 in full payment of the tax at 16 mills upon its property at the valuation of \$49,100.00.

These remittances are tendered in full payment of these respective taxes, and you are requested to have your Board of Equalization meet and equalize the valuations upon my clients' respective property as hereinbefore stated and to officially accept these checks in full payment of the 1950 taxes on those properties.

Please bear in mind that these checks are remitted for no other purpose than in full payment of the 1950 municipal taxes upon my clients' respective Yakutat properties.

Yours truly,

R. E. ROBERTSON.

Enclosures

RER:er

23. Applicant received said letter with said two checks on or about February 2, 1951, and thereafter cashed said checks and accepted the proceeds thereof and has never returned the proceeds or any part of the proceeds of said two checks.

24. On February 3, 1951, Attorney Robertson wrote a letter to the Applicant's City Clerk and enclosed therewith Applicant's original tax notice, as stated in said letter, a copy of which letter is as follows:

February 3, 1951.

City Clerk,
Yakutat, Alaska.

Dear Sir:

Supplementing my yesterday's letter by registered mail to you in which I enclosed checks totalling \$2484.80 in payment of taxes on proper valuations of the property of Libby, McNeill & Libby and of the property of the Yakutat & Southern Railway for the tax year 1950: I now enclose your original tax notice, which I mentioned in my yesterday's letter, and ask you to upon acceptance of those two checks, forward it to me after dating and signing it.

Yours very truly,

R. E. ROBERTSON.

Enclosure

RER:er

25. On December 7, 1951, the Bellingham Canning Company wrote a letter to Applicant's Board of Trustees with which it enclosed its check for \$2866.35 for 1951 municipal taxes upon a valuation of \$182,803.00 at 16 mills or a total of \$2924.85, less 2% amounting to \$58.50, leaving \$2866.35, the amount of the check. The following is a copy of said letter:

December 7, 1951.

Board of Trustees

City of Yakutat

Yakutat, Alaska

Gentlemen:

Enclosed you will find our check in the amount of \$2,866.35, in full payment of our 1951 Municipal Taxes, broken down as follows: Valuation of \$182,803.00 @ 16 mills, total of \$2,924.85 less 2% for full payment of taxes before December 15, 1951, amount of \$58.50, leaving balance of \$2,866.35 amount of our check.

As the board will recall, we made a special trip to Yakutat, to meet with your Board of Equalization on October 30th. At that time we laid before your board our honest, true and actual figures, as to costs of property, and also our actual inventory costs figures, which total was \$182,803.00. At this meeting we gave you these figures in all sincerity, and were indeed greatly surprised when we received your valuations placed at \$281,625.00, where or how this was derived at we are unable to understand. Without any doubt the valuation as placed by us, is the actual valuation, and for this reason we have so based our tax payment to you. As we told your board, it will be necessary for you to resort to the courts for any additional amounts you may decide still due you.

At the time that we met with your board, and also on different occasions, we have tried to make

ourselves clear, in that we intend to do all we can to help the City of Yakutat, not only as a city, but also the individual citizens of the town. In return we did expect the city to be fair in their dealings with us, and we are certainly in hopes that the tax matter is not a cridel of the city's dealings with us. On two different occasions we have sent letters to your mayor, but have not even received the courtesy of a reply. Things like this makes it very hard for us to cooperate, even though our desire is to do so.

We are sorry that this matter has come up during the first year of our operation at Yakutat, but do hope, that the City of Yakutat will realize our desire to help. Providing for a Christmas dinner for the people of Yakutat, is certainly indicative of our desire to help and share in the community life of your town.

In closing we sincerely hope that we can all work together for a better community at Yakutat. May we also take this opportunity to wish you and the people of Yakutat, a very happy and joyous holiday season.

Yours very truly,

BELLINGHAM CANNING
COMPANY.

JEANICE M. WELSH.

26. Applicant cashed said check and accepted the proceeds thereof and has never paid or refunded any part of said \$2,866.35.

Dated at Juneau, Alaska, November 20, 1952.

ROBERTSON, MONAGLE &
EASTAUGH.

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed November 21, 1952.

[Title of District Court and Cause.]

INTERROGATORIES P R O P O U N D E D B Y
O B J E C T O R S T O A P P L I C A N T U N D E R
R U L E 3 3

1. Did Applicant appoint any person as assessor for the tax year 1950? If so, state the name and present address of such person, or, if more than one, the names and present addresses of each person so appointed as assessor.

2. Did such person or, if more than one, each such person, take an oath in writing to honestly, faithfully and impartially perform the duties of the office of assessor?

3. Was such oath, or, if more than one person, such oath of each such person, filed with Applicant's City Clerk? If so, give the date on which each such oath was so filed, and the name and present address of the person before whom each such oath was made and subscribed, and the present location of,

and the name and present address of the present custodian of, each such oath.

4. Did applicant's Board of Trustees or Board of Equalization make the appointment of such person as assessor or, if more than one, each such person as assessor, at a meeting of said Board? If so, state when and where each such meeting was held and whether or not a written record was made of the business transacted at such meeting or meetings including the appointing of such assessor, and in what book, document, or other instrument said written record was entered, and the present location of, and the name and present address of the present custodian of, said record.

5. Did such assessor or assessors inspect the property of Libby, McNeill & Libby and of the Yakutat & Southern Railway, or either of them, during the tax year 1950? If so, state the date or respective dates on which such assessor or respective assessors inspected the property of Libby, McNeill & Libby, and the date or respective dates on which such assessor or respective assessors inspected the property of the Yakutat & Southern Railway.

6. Did such assessor or assessors assess the property of Libby, McNeill & Libby during the tax year 1950? If so, state the date or respective dates on which such assessor or respective assessors assessed the property of Libby, McNeill & Libby, whether any written record was made thereof, where that record is now located, whether the property was

assessed in a lump or by tracts or by parcels, and the respective amount or amounts assessed.

7. Did such assessors or assessor assess the property of Yakutat & Southern Railway during the tax year 1950? If so, state the date or dates on which such assessor or respective assessors assessed the property of Yakutat & Southern Railway, whether any written record was made thereof, where that record is now located, whether the property was assessed in a lump or by tracts or by parcels, and the respective amount or amounts assessed.

8. Did the assessor or, if more than one person was appointed assessor, the assessors make an assessment list for the tax year 1950? If so, state the name or names and the present address or addresses of such assessor or assessors who made either all or any part of that assessment list and identify what part of the assessment list was made by each assessor if there was more than one assessor for the tax year 1950.

9. State the name and present address of the person who subscribed an affidavit to the assessment book for the tax year 1950 and the name and present address of the person before whom that affidavit was made and subscribed and the official position of said affiant, and under or by whose or what official authority or direction he made said affidavit.

10. Where now are the assessment list for 1950 and the assessment book for 1950?

11. Was Libby, McNeill & Libby named in either the assessment list or the assessment book for 1950?

12. Describe the property, if any, that was shown as assessed to Libby, McNeill & Libby for the tax year 1950 in either or both the assessment list and the assessment book for 1950.

13. Was Yakutat & Southern Railway named in either the assessment list or the assessment book for 1950?

14. Describe the property, if any, that was shown as assessed to Yakutat & Southern Railway for the tax year 1950 in either or both the assessment list and the assessment book for 1950.

15. Was Bellingham Canning Company named in either the assessment list or the assessment book for 1950?

16. Describe the property, if any, that was shown as assessed to Bellingham Canning Company for the tax year 1950 in either or both the assessment list and the assessment book for 1950.

17. Did Applicant's Board of Trustees elect to and make the tax assessments for the tax year 1950, or did it appoint an assessor to do so?

18. If Applicant's Board of Trustees or Board of Equalization elected to make and made the tax assessments for the tax year 1950, state on what date or dates they made those assessments, whether any Board meeting or meetings were held for that purpose, the names of the Trustees attending each

such meeting or meetings, the place at which each such meeting was held, whether any written record was made of the business transacted at each such meeting, and the nature of such, if any, written record, and the present location of, and the name or names of the present custodian, of said record.

19. Did Applicant appoint any person as assessor for the tax year 1951? If so, state the name and present address of such person, or, if more than one, the names and present addresses of each such person so appointed as assessor.

20. Did such person or, if more than one, each such person, take an oath in writing to honestly, faithfully and impartially perform the duties of the office of assessor?

21. Was such oath, or, if more than one person, such oath of each such person, filed with Applicant's City Clerk? If so, give the date on which each such oath was so filed, and the name and present address of the person before whom each such oath was made and subscribed, and the present location of, and the name and present address of the present custodian of, each such oath.

22. Did Applicant's Board of Trustees or Board of Equalization make the appointment of such person as assessor or, if more than one, each such person as assessor, at a meeting of said Board? If so, state when and where each such meeting was held and whether or not a written record was made of the business transacted at such meeting or meetings

including the appointment of such assessor, and in what book, document, or other instrument said written record was entered, and the present location of, and the name and present address of the present custodian of, said record.

23. Did such assessor or assessors inspect the property of Bellingham Canning Company and of the Yakutat & Southern Railway, or either of them, during the tax year 1951? If so, state the date or respective dates on which such assessor or respective assessors inspected the property of Bellingham Canning Company, and the date or respective dates on which such assessor or respective assessors inspected the property of the Yakutat & Southern Railway.

24. Did such assessor or assessors assess the property of Bellingham Canning Company during the tax year 1951? If so, state the date or respective dates on which such assessor or respective assessors assessed the property of Bellingham Canning Company, whether any written record was made thereof, where that record is now located, whether the property was assessed in a lump or by tracts or by parcels, and the respective amount or amounts assessed.

25. Did such assessor or assessors assess the property of Yakutat & Southern Railway during the tax year 1951? If so, state the date or dates on which such assessor or respective assessors assessed the property of Yakutat & Southern Railway, whether any written record was made thereof, where

that record is now located, whether the property was assessed in a lump or by tracts or by parcels, and the respective amount or amounts assessed.

26. Did the assessor or, if more than one person was appointed assessor, the assessors make an assessment list for the tax year 1951? If so, state the name or names and the present address or addresses of such assessor or assessors who made either all or any part of that assessment list and identify what part of the assessment list was made by each assessor if there was more than one assessor for the tax year 1951.

27. State the name and present address of the person who subscribed an affidavit to the assessment book for the tax year 1951 and the name and present address of the person before whom that affidavit was made and subscribed and the official position of said affiant, and under or by whose or what official authority or direction he made said affidavit.

28. Where now are the assessment list for 1951 and the assessment book for 1951?

29. Was Bellingham Canning Company named in either the assessment list or the assessment book for 1951?

30. Describe the property, if any, that was shown as assessed to Bellingham Canning Company for the tax year 1951 in either or both the assessment list and the assessment book for 1951.

31. Was Yakutat & Southern Railway named in

either the assessment list or the assessment book for 1951?

32. Describe the property if any, that was shown as assessed to Yakutat & Southern Railway for the tax year 1951 in either or both the assessment list and the assessment book for 1951.

33. Was Libby, McNeill & Libby named in either the assessment list or the assessment book for 1951?

34. Describe the property, if any, that was shown as assessed to Libby, McNeill & Libby for the tax year 1951 in either or both the assessment list and the assessment book for 1951.

35. Did Applicant's Board of Trustees elect to make and make the tax assessments for the tax year 1951, or did it appoint an assessor to do so?

36. If Applicant's Board of Trustees or Board of Equalization elected to make and made the tax assessments for the tax year 1951, state on what date or dates they made those assessments, whether any Board meeting or meetings were held for that purpose, the names of the Trustees attending each such meeting or meetings, the place at which each such meeting was held, whether any written record was made of the business transacted at each such meeting or meetings, and the nature of such, if any, written record and the present location of, and the name or names of the present custodian of, such record.

37. Do the official minutes and record book of Applicant, including the minutes of meetings of its

Board of Trustees and Board of Equalization, commencing with and including October 2, 1948, and running through and including October 6, 1952, contain or show any statements or entries relative to an assessor other than statements or entries, substantially or verbatim, as follows: March 12, 1949: "The Mayor explain about the Libby's property tax situation. Mayor ask the Board of Trustees if they wish to hire expert city assessor from Juneau to assess the property of Libby McNeill, if Libby fail to pay the balance of tax which they owe to the City of Yakutat by March 15, 1949. Those that voted in favor of bring up a qualified assessor were, Mr. Ben Peterson, Harry Bremner, Sr., Mrs. Esther Bremner, Mrs. Helen Bremner, Mr. John Ellis, and Mr. J. B. Mallott. A resolution to authorize \$350.00 and not over is proposed for the expense of the assessor. (Resolution No. 16.) The entire five members of the board of Trustees voted in favor of the proposed resolution number 16."

And without date, at page 72 of the City of Yakutat's record book: "Whiting's valuation return accepted. Assessor was advised to assess the property of Mr. and Mrs. Simons."

And without date, at page 80 of the City of Yakutat's record book: "The assessor Mr. Sheldon James, Jr.,"

and, June 6, 1950: "It was moved and seconded to accept David Abraham as City Assessor. Motion was carried."

and, November 6, 1950: "John Williams to act as assessor until removed from office, appointed by City Mayor."

and, November 7, 1950: "Edward Rener says he transferred property to Melvin Rener, also that he told the former assessor Mr. Hamilton of this change."

38. If you answer Interrogatory No. 37 affirmatively, then state what other entries or statements relative to an assessor are shown, in what they appear or are entered, and their respective dates.

39. Do the official minutes and record book of Applicant, including the minutes of meetings of its Board of Trustees and of its Board of Equalization, commencing with and including October 2, 1948, and running through and including October 6, 1952, contain or show any statements or entries relative to tax assessment of property of Libby, McNeill & Libby, Yakutat & Southern Railway, and Bellingham Canning Company other than statements or entries, substantially or verbatim, as follows:

October 11, 1948: "Telegram from Libby's attorney, Mr. R. E. Robertson, was read at this meeting. The telegram was in protest of the Libby's property valuation as set by the assessor."

March 12, 1949: "The Mayor explain about the Libby's property tax situation. Mayor ask the Board of Trustees if they wish to hire expert city

assessor from Juneau to assess the property of Libby, McNeill, if Libby fail to pay the balance of tax which they owe to the City of Yakutat, by March 15, 1949. Those that voted in favor of bringing up a qualified assessor were, Mr. Ben Peterson, Harry Bremner, Sr., Mrs. Esther Bremner, Mrs. Helen Bremner, Mr. John Ellis and Mr. J. B. Mallott.

“A Resolution to authorize \$350.00 and not over is proposed for the expense of the assessor. (Resolution No. 16.) The entire five members of the Board of Trustees voted in favor of the proposed resolution number 16.”

April 6, 1950: “A letter concerning Libby’s city tax question was also read.

“Herbert Bremner moved that the City Board of Trustees authorize Mr. William L. Paul, Jr., City Attorney, to proceed in court action entitled: ‘City versus Libby, McNeill & Libby.’ Motion was seconded by Ben Peterson. Motion was carried with the following members voting yes: Ben Peterson, John Ellis, Helen Bremner, Esther Bremner, Jack Ellis and Herbert Bremner. There was no contrary vote.

“Herbert Bremner moved that we pay City Attorney William L. Paul, Jr., on a flat rate basis of 12 per cent of principal and interest and penalty plus attorney’s fee allowed by the court. Seconded by Mr. Ben Peterson. Motion carried unanimously.

“John Ellis moved that the City Treasurer be authorized to pay the \$21.00 to file in court and Marshal’s fee of \$3.10. Motion was seconded by Ben Peterson. Motion carried.”

February 6, 1951: “Mayor read letter from Robertson, attorney for Libby, McNeill & Libby, the contents of letter in part from Robertson as follows: Two checks made out for taxes for 1950 for Libby, McNeill & Libby. These checks (#64131 University Branch, #64130 Nat’l Bank of Commerce dated 1/30/51, one for \$785.60, one \$1,699.25) were indorsed for deposit only in the First National Bank by Mayor Mallott and sent to William Paul, Jr., to be photographed.”

April 30, 1951: “Next order of business is a letter written from William Paul, Jr., pertaining to the case of City of Yakutat versus Libby, McNeill & Libby.

“Discussion taken on the question ‘City of Yakutat versus Libby’s’ sending a witness to testify on behalf of the City.

“J. B. Mallott authorized to take records of City of Yakutat to appear as a witness on behalf of City.

“Witness granted \$13.00 per day for five days, \$68.10 for fare and cab service.”

June 4, 1951: “Judge Folta hasn’t rendered a decision on the court case of City of Yakutat vs. Libby’s.

“Letters have been read by the Mayor. Public Works, Assessing Bellingham property.”

October 8, 1951: “Mayor reads communication from William L. Paul, Jr., about the tax case of Yakutat vs. Libby, McNeill & Libby.”

October 30, 1951: “Bellingham Canning Co., has been opened for discussion. With Mr. Bristol & Mrs. Welsh present.

“Mr. Bristol asks the Board what the value is—What Felix Toner says? Or what the real value is?

“Store inv. \$42,235.00. Stock Room inventory \$35,568.00 as given by Mr. Bristol. Mrs. Welsh presented to the Board \$125,000.00 for Yakutat & Southern Railway and \$77,803.00 for inventory of the Store & Stockroom. Out of the \$125,000.00 there is \$25,000.00 which is outside of the city limit of Yakutat and is non-taxable.

“This is the true value as stated by Mrs. Welsh and Mr. Bristol of Bellingham Canning Co. But this does not include a light plant—second hand, a value of \$5,000.00 as given by Mrs. Welsh. Increasing the value of Bellingham to \$182,803.00.

“Bellingham Canning Co. presents \$182,803.00 for their property as a starting point for this tax roll for this year and next year there may be improvement added. It has been stated by Bellingham that it is their wish to come to a fair value on their property and to stay out of court action.

“It is up to the Board of Equalization on whether

to accept the true value on Bellingham Canning Co.'s property as presented by Mrs. Welsh and Mr. Bristol."

November 12, 1951: "The Board next takes up Bellingham Canning property. Discussion taken on Bellingham Canning Co.

"It has been brought out that this case against the property of Bellingham Canning Co., which was formerly owned by Libby's is already in court and whatever the Judges decide on this case will be final. The Board decide that the property on Bellingham Canning Co., remains the same as set in the two last year, at \$281,625.00, as follows: Land \$11,000.00; \$176,125.00 for buildings; \$94,000.00 for personal."

April 7, 1952: "Bellingham will not sell any surplus electricity to the U.B. The city has taxed Bellingham property unjustly.

"Councilman Whiting stated his view on the above question as follows: It is just like baiting a dog with a hunk of meat, they seem to be trying to have the city lower their taxes, but which can't be done.

"Mayor Mallott presents more information on electricity and taxes on cannery. We haven't assessed Bellingham on their cannery machinery, which \$75 thousand per line."

October 3, 1952: "Be it resolved that the Mayor and city attorney that settlement on the property

valuation and taxes for the years of 1950-51-52 on this bases the difference in valuation between the city and Co. be split plus that Bellingham at its own expense employ American Appraiser Co., or some other company to appraise the entire plant and that the appraisal for the American Can Co., be fixed at the same figure as for Craig namely 30 thousand per line.

“Motion carried.”

40. If you answer Interrogatory 39 affirmatively, then state what other statements or entries relative to assessing the property of Libby, McNeill & Libby, Yakutat & Southern Railway, and Bellingham Canning Company, or either of them, are shown, in what they appear or are entered, and their respective dates.

41. Did Applicant's Trustees officially direct its assessor or any other official to post the notice of delinquent taxes on real property in the City of Yakutat, Alaska, which is attached to Applicant's application at the front door of the Yakutat post office and in three other conspicuous, public places in said city for a period of 30 days and officially designate the place where and the date when the application would be made for order of sale?

42. Was said direction given and said designation made at a meeting of Applicant's Board of Trustees or Board of Equalization?

43. Was that direction given and said designation made at the same or at different meetings?

44. State where and when such meeting was held and the names and present addresses of all trustees present at each such meeting.

45. Was a written record kept of the business transacted at each such meeting? If so, in what book, document, or other instrument was that record entered, and state the present location of, and the name and present address of the present custodian of, that record.

46. Did Applicant's Board of Trustees or Board of Equalization officially direct that applicant's application should be presented to this court at Juneau on September 9, 1952, or as soon thereafter as the same could be heard?

47. Was that direction given at a meeting of applicant's Board of Trustees or Board of Equalization? If so, state when and where that meeting was held, and the names and present addresses of all trustees present at that meeting.

48. Was any written record kept of the business transacted at that meeting and the giving or making of such direction? If so, in what book, document, or other instrument was said record entered, and state the present location of, and the name and present address of the present custodian of, that record.

49. State the three conspicuous public places, other than the Yakutat post office, at which applicant's notice of delinquent taxes on real property in the City of Yakutat, Alaska, which is attached to applicant's application, was posted, and

Dated at Juneau, Alaska, November 21, 1952.

ROBERTSON, MONAGLE &
EASTAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed November 21, 1952.

November 22, 1952.

Mr. Fred Paul,
211 Lyon Building,
Seattle, Washington.

Re: Yukutat Delinquent Taxes 1950-51.

My dear Fred:

I have your letter of the 20th reporting that you made a trip to Bellingham in response to the notice and authorization for the taking of the deposition of Mrs. Welsh and her son Robert on November 20, and that the deposition failed to take place because the witnesses were not present.

I talked with Mr. Robertson this noon and he said he had notified Mrs. Welsh and her son Robert of the taking of the deposition but had received no acknowledgment agreeing as to the time and place. Mr. Robertson had not previously notified me of the impossibility of the taking of the deposition.

It is agreeable with the objectors that a reasonable attorney's fee is due for your trip and your actual expenses. From your letter I gather the information that \$50 per day, one day going and one day returning from Bellingham, is reasonable and that your actual expenses amounted to \$11.65 including transportation and long distance telephone calls, making a total of \$111.65. I am sending a carbon copy of this letter to Mr. Robertson as an indication that there is immediately due from his client the sum of \$111.65 which may be made payable directly to you for this work.

Sincerely yours,

WILLIAM L. PAUL, JR.

WLP:k

c.c. R. E. Robertson

J. B. Mallott

Clerk of the Court

Filed November 26, 1952.

[Title of District Court and Cause.]

PETITION

Objectors represent that the official minutes and record book of the applicant's Board of Trustees and Board of Equalization, as well as all other records in any manner relating to the appointing and qualifying of an assessor and to the assessment and levy of any of the taxes for the municipal tax years

1950 and 1951 which are sought by the application herein to be foreclosed as a lien against the property of objectors, or any of them, are material and pertinent at the hearing on said application and should be produced in court; but, applicant, through its city attorney, has notified objectors, through their attorney, that applicant does not intend to produce any of said records at said hearing; that objectors are agreeable to paying and offer to pay the ordinary reasonable cost of transporting all of said records from Yakutat to Juneau and return by air-mail or air express; that at said hearing objectors desire and will need to introduce evidence by several witnesses, some of whom must be brought from the State of Washington and possibly one or more from Yakutat.

Wherefore, Objectors pray that said hearing be set for a definite date sufficiently in advance to permit objectors to have said witnesses in attendance and also to produce all of said records under subpoena duces tecum should the Court not order applicant to produce them at said hearing.

Dated at Juneau, Alaska, this 28th day of November, 1952.

ROBERTSON, MONAGLE &
EASTAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

[Endorsed]: Filed November 28, 1952.

Robertson, Monagle & Eastaugh
Attorneys at Law

Nov. 28, 1952.

Mr. Fred Paul,
Attorney at Law,
211 Lyon Building,
Seattle, Washington.

Re: Yakutat Delinquent Taxes 1950-1951.

Dear Fred:

Referring to your brother Bill's letter to you of the 22nd instant, of which I received a copy this morning: Having made on many occasions the trip from Seattle to Bellingham and return and knowing that a bus runs every hour for most of the hours of the day, and that as I recall the bus only takes about two hours each way to make the trip, I can't possibly agree that it required you two days in making the trip from Seattle to Bellingham to learn that no depositions would be taken on the 20th instant in the above matter.

Neither do I know what long distance telephone call you were obliged to make because of the depositions not being taken.

I have forgotten what the round trip bus fare is from Seattle to Bellingham and return, but I doubt that it is more than \$7.50.

I realize that under Rule 30(g)(1), as I told your brother last Saturday, our failure to attend and take these depositions, in view of your having done

so, obliges us to pay the amount of your reasonable expense and a reasonable attorney fee. I am not willing to pay for any long distance telephone calls until I know why they were necessarily incurred by you in connection with the trip, nor an attorney fee for two days when you could have easily made the trip in a half day, nor any in excess of the actual transportation cost except you possibly are entitled to one meal. I therefore enclose my check in your favor for \$60.00, of which \$50.00 is in payment of your attorney fee for one day, and \$10.00 expenses.

Please acknowledge receipt.

Yours very truly,

R. E. ROBERTSON,
Attorney-at-Law.

Enclosure

RER:er

c.c. W. L. Paul, Jr., Juneau
Clerk District Court, Juneau

[Title of District Court and Cause.]

MOTION FOR PRODUCTION OF DOCUMENTS
FOR INSPECTION, COPYING OR PHOTO-
GRAPHING

Objectors move that applicant produce at the hearing on applicant's Application and objectors' Objections in Juneau, Alaska, for the purpose of inspection and copying by objectors all of the official minutes and other books and records of applicant, its Board of Trustees, its Board of Equalization, and of its assessor or assessors, including oaths of office of such assessor or assessors, in any manner pertaining to the assessment, evaluating or levying of taxes upon the property of the objectors or any of them for the tax years 1950 and 1951.

Objectors hereby offer to pay the reasonable cost of transporting said records from Yakutat to Juneau, Alaska, and return by air express, parcel post, or airmail.

Dated at Juneau, Alaska, December 2, 1952.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed December 2, 1952.

[Title of District Court and Cause.]

DEPOSITION UPON INTERROGATORIES OF
HAROLD G. HEATON, A WITNESS
CALLED ON BEHALF OF OBJECTORS

Pursuant to Notice of Taking Deposition, hereto attached, on this 12th day of December, 1952, at the office of E. E. Lescher at 637 Central Building, Seattle, Washington, at the hour of 10:00 o'clock a.m., the deposition upon written examination of Harold G. Heaton, a witness called on behalf of the Objectors, upon direct interrogatories hereunto attached, to be used by the objectors in accordance with the Federal Rules of Civil Procedure at the hearing upon applicant's Application and objectors' Objections herein, was taken before E. E. Lescher, a Court Reporter and Notary Public in and for the State of Washington, residing at Seattle. [1*]

HAROLD G. HEATON

called as a witness on behalf of the Objectors, being first duly sworn by the Notary Public, in answer to written interrogatories testified as follows:

Inter. 1. Please state your name and residence.

A. Harold G. Heaton, 8720-19th N.W., Seattle 7, Washington.

Inter. 2. What is your official connection with the Objector, Libby, McNeill & Libby?

A. District Superintendent.

Inter. 3. State how long you have been employed

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

(Deposition of Harold G. Heaton.)

by Libby and in what various capacities and over and for what periods with approximate dates.

A. I have been employed by Libby, McNeill & Libby since 1943. Between 1943 and 1946 I was in charge of their New Products Division. During 1946 I was Superintendent of the Moser Bay Cannery. Since 1947, up to and including the present time, I have been District Superintendent.

Inter. 4. In what business did Libby engage in Alaska now and during those years?

A. Salmon canning.

Inter. 5. What, if any, experience, other than in the employment of Libby, have you had in the salmon canning business?

A. Starting in 1936 I was employed by the Columbia [2] River Packers Association as Technologist in charge of their Salmon Reduction Plant. In 1939 I was made Superintendent of their Elmore Cannery and continued in that capacity until terminating my services with them in 1943.

Inter. 6. In performing your duties as division superintendent of the salmon division of Libby, do you have anything to do with the construction, maintenance, or repair of the buildings that it uses in conducting the salmon canning business in Alaska? A. Yes.

Inter. 7. During what years have you had such duties? A. Since 1947.

Inter. 8. State briefly the scope of those duties.

A. All of Libby's divisions prepare what is known as Requests and Estimates for approval to

(Deposition of Harold G. Heaton.)

expend funds for both new construction and repairs to buildings; these Requests and Estimates are approved by the Board of Directors and the President and then we are permitted to expend those funds. I have charge of the processing and handling of all of those Requests and Estimates forms for the Salmon Division.

Inter. 9. In the performance of those duties did you familiarize yourself with the various buildings used by Libby in conducting its salmon canning operations in [3] Yakutat, Alaska, and other places in Southeastern Alaska? A. Yes.

Inter. 10. Did Libby operate a salmon cannery at Yakutat, Alaska, during the salmon fishing seasons of 1949 and 1950? A. No.

Inter. 11. If not, state why not.

A. Because, in our estimation, it would have been unprofitable in view of the reduced runs of fish which had appeared in the area during the few preceding years and the outlook for continuation of these reduced runs. The market outlook was also weak, and the condition of the property required somewhat larger than normal expenditures to maintain them in usable condition.

Inter. 12. State the last year during which Libby operated a salmon cannery at Yakutat, Alaska.

A. 1948.

Inter. 13. Upon whose land and in whose buildings did Libby conduct that salmon cannery at Yakutat?

(Deposition of Harold G. Heaton.)

A. Upon the land in the buildings of the Yakutat and Southern Railroad.

Inter. 14. In your employment by Libby what, if any, occasion have you had to ascertain the true and full value [4] of the various buildings it either owned or used in conducting its salmon canning operations in Alaska, including those at Yakutat?

A. A part of my responsibility annually is to check with the Superintendent of each cannery and determine what repairs and new investment items are going to be required for the following year. During the course of this checking I carefully go over each plant in Southeastern at least once a year, sometimes twice. A thorough examination of each of the buildings is conducted which includes testing the piling and capping underneath the buildings, checking the roofs for leaks during rainy periods, and examining the condition of dock piling and decking. In addition, the general condition of the buildings is noted with respect to paint, window sash, etc. As a result of these surveys, the superintendent and I determined that at Yakutat in 1950, to place the Yakutat plant in operation in 1951, major expenditures would be required for repairs to the dock, painting of buildings, foundation of superintendent's house, bookkeeper's house, sewer lines, ties and tracks, railroad cars, and water pumps. We determined that the condition of the building designated as Item 7, Exhibit A was so [5] deteriorated that it could no longer be used, and considerable expenditures would be required to in-

(Deposition of Harold G. Heaton.)

stall the canning machinery in the building designated as Item 6, Exhibit A, in order to permit a canning operation.

Inter. 15. As division superintendent of Libby what, if any, charge or supervision did you have of those buildings at Yakutat on June 1, 1950?

A. It was my responsibility to determine the extent of repairs, remodeling, and maintenance required.

Inter. 16. Were you familiar with those buildings at Yakutat and their condition on June 1, 1950? A. Yes.

Inter. 17. State the extent of your familiarity with them.

A. In 1948 I made a complete inspection of all the buildings as I do annually in all Libby Southeastern plants. In 1949 I made a special examination of the dock and its underpinning and a cursory examination of the other buildings in question. In 1950 a complete inspection was made of all buildings, and the conditions as outlined in the answer to Question 14 were noted. As a result of this survey, it was determined that major expenditures would be required to place the plant in operating condition for the next season. [6]

Inter. 18. Can you state what was the true and full value of those buildings on June 1, 1950?

A. Yes.

Inter. 19. Which, if any, of those buildings were used for or in connection with the canning of salmon during the years 1949 and 1950? A. None.

(Deposition of Harold G. Heaton.)

Inter. 20. What was each of those buildings used for during each of those years?

A. The store building, Item 4, Exhibit A, was used for the purpose of conducting a retail store. The stockroom, Item 5, Exhibit A, still had a small quantity of cannery supplies stored therein. The cannery building, Item 6, Exhibit A, was used during the winter months to store a truck and a few skiffs. Warehouse #1, Item 7, Exhibit A, was not used. Warehouse #2, Item 8, Exhibit A, housed the light plant which was used to supply power for the cold storage and light. The winterman's house, Item 10, Exhibit A, the Superintendent's House, Item 11, and the Guest House, Item 13, were used during the summer months to house Libby personnel. The round house, Item 18, Exhibit A, was used to house the truck and small cars operated on the railroad. The other buildings were not used. [7]

Inter. 21. State, in your opinion, how the true and full value of a building constructed for use in salmon canning operations would be affected by non-use for that purpose.

A. Such buildings would have a greatly reduced value.

Inter. 22. Attached is a list, marked Exhibit A, of 22 buildings or structures and one utility system including water, electric, and sewer distribution systems situated at Yakutat, Alaska. Please look at that list, and identify which of those buildings, structures, and systems, including their respective

(Deposition of Harold G. Heaton.)

then conditions, you were familiar with on June 1, 1950. A. All.

Inter. 23. Who owned said buildings, structures, and systems on June 1, 1950? Identify the ownership of each, if under any different ownership.

A. It is my recollection that the Yakutat and Southern Railway owned all of the structures listed thereon with a possible exception of Items 3, 20, and 23.

Inter. 24. Please take that list, item by item, and identify each building with which you were familiar on June 1, 1950, and describe its general structure, its then condition, its approximate age or date of construction, and its true and full value in your opinion, on June 1, 1950. [8]

A. Item 1. Dock structure. I made an examination of the under-part of this structure, both in 1948 and 1949, because we were in some doubt that it would stand. As of June 1, 1950, the piling were teredo-eaten, the capping and decking were rotten. No repairs had been made to the structures, except minor repairs to the decking, since 1944. True and full value on June 1, 1950—\$9,500.

Item 2. Dock warehouse. This is a single construction building which, in 1950, was in quite good repair. True and full value on June 1, 1950—\$3,800.

Item 3. Oil tanks. These were old retorts or second hand type tanks when installed and five were unserviceable in 1950, because they leaked around the rivets and the fittings where the pipes joined the tanks. True and full value on June 1, 1950—\$950.

(Deposition of Harold G. Heaton.)

Item 4. Store building. The foundation of this building was renewed in 1946 and 1947. The building was in good repair but needed painting. True and full value on June 1, 1950—\$9,500.

Item 5. Stockroom. The foundation of this building was renewed in 1947 and 1948, and the building was in good repair but needed painting. It is a double constructed building and housed the storekeeper's quarters on the top floor. True and full [9] value on June 1, 1950—\$9,500.

Item 6. Cannery building. The foundation and walls of this building were renewed in 1947 and 1948, and a concrete floor and foundation were installed. True and full value on June 1, 1950—\$31,300.

Item 7. Warehouse #1. This building was completely deteriorated, window casings, studs, and foundation were all rotted. We had planned to abandon this building when canning machinery was installed in the building designated as Item 6. True and full value on June 1, 1950—nil.

Item 8. Warehouse #2. In the fall of 1948, half of this building was torn down and the other half housed the power plant. The roof and foundation were in poor condition. True and full value on June 1, 1950—\$3,800.

Item 9. Old China house. Plumbing, heating and cooking facilities were removed and part of the building was torn down in 1948. Partitions and stairways were also changed in 1948 and the foundation had been recently repaired. The building was of double construction and fair condition. True and full value on June 1, 1950—\$9,000.

(Deposition of Harold G. Heaton.)

Item 10. Winterman's house. This structure was composed of three sheds added together [10] from time to time. The foundation was completely deteriorated. True and full value on June 1, 1950—\$475.

Item 11. Superintendent's house. This building also consisted of three sheds fastened together to make one building. The roof and foundation were completely deteriorated and the building was re-roofed in 1950, probably after June 1. True and full value on June 1, 1950—\$575.

Item 12. Bookkeeper's house. This building consisted of one small central room to which had been added three lean-tos at various times and was in poor condition both as to foundation and walls. True and full value on June 1, 1950—\$575.

Item 13. Guest house. This was a small building composed of one main room with two lean-to sheds attached, and was also in poor condition. The roof was deteriorated and the foundation was in poor condition. True and full value on June 1, 1950—\$575.

Item 14. Messhouse. This building was completed in either 1944 or 1945 and in June, 1950, was a good building in good condition. True and full value on June 1, 1950—\$4,750.

Item 15. Bunkhouse. This building was completed about the same time as the messhouse and cost approximately the same. It is of the same gen-

(Deposition of Harold G. Heaton.)

eral type [11] construction. True and full value on June 1, 1950—\$4,750.

Item 16. I am unable to identify.

Item 17. Bunkhouse #2. This was an old building which stood across the road from the other buildings on top of the hill. It was in very poor condition, and, while designed to house fifteen men, only the two front rooms had been used for the past several years that Libby operated the cannery. True and full value on June 1, 1950—\$475.

Item 18. Roundhouse. The foundation of this building is partly concrete and partly frame. The roof was in very poor condition. True and full value on June 1, 1950—\$1,425.

Item 19. Track warehouse. This building has had the shingles removed from one side of its roof since 1943 or 1944, and is filled with junk. The foundation is completely deteriorated and the walls are all rotted. True and full value on June 1, 1950—nil.

Item 20. Water tanks and tower. Two of the tanks were unusable and one of the towers was not in use in 1950, they were completely deteriorated. The others were in good condition and installed in 1946. True and full value on June 1, 1950— [12] \$2,850.

Item 21. Foreman's house. This is a frame building of comparable construction to those listed as Items 10, 11, and 12. True and full value on June 1, 1950—\$475.

Item 22. Red house. This is a smaller struc-

(Deposition of Harold G. Heaton.)

ture of the same type as Item 21. True and full value on June 1, 1950—\$240.

Item 23. Utility system, including water, sewer, and electric distribution systems. These were in a fair state of repair in 1950 and because of the large area covered in Yakutat would have a true and full value on June 1, 1950, of \$7,600.

Inter. 25. In your valuations did you use as a factor the non-use of any of the buildings and structures for salmon canning operations during 1949 and 1950? If so, explain and to what extent, and identify which buildings.

A. Valuations of all buildings enumerated under Question 24 take into consideration the factor of possible usage which at Yakutat was a limited usage owing to the deterioration of the salmon runs in the area. In the salmon canning business, as well as in any other business, any building has a value according to the use to which it may be put. The buildings at Yakutat were sufficient to put up much larger [13] packs than those which the fish runs would permit and I have valued the buildings accordingly.

Inter. 26. What, if any, other use did either Libby or the Yakutat & Southern Railway have for or make of said buildings during 1949 and/or 1950?

A. See answer to interrogatory 20.

Inter. 27. Do you admit or deny that the true and full value on June 1, 1950, of the land of the Yakutat & Southern Railway in the town Yakutat was \$8,000?

A. I admit that the true and full value on June

(Deposition of Harold G. Heaton.)

1, 1950, of the land of the Yakutat and Southern Railway in the town of Yakutat was \$11,000.

Inter: 28. Do you admit or deny that the true and full value on June 1, 1950, of the railroad trackage of the Yakutat & Southern Railway in the town of Yakutat was \$2,850?

A. I admit that the true and full value on June 1, 1950, of the railroad trackage of the Yakutat and Southern Railway in the town of Yakutat was \$2,700.

Inter. 29. Are those respective valuations identical with or different from the respective valuations stated in Objector Yakutat & Southern Railway's tax return for the year commencing June 1, 1950?

A. The respective valuations which I have stated in answers to questions 27 and 28 are identical [14] with the respective valuations stated in objector, Yakutat and Southern Railway's tax return for the year commencing June 1, 1950.

Inter. 30. Did Libby, McNeill & Libby on or about May 3, 1951, sell its stock interest in the Objector, Yakutat & Southern Railway to the Objector, Bellingham Canning Company? A. Yes.

Inter. 31. Did Libby enter willingly or unwillingly into that transaction? A. Willingly.

Inter. 32. Did Bellingham Canning Company enter willingly or unwillingly into that transaction?

A. Willingly.

Inter. 33. Upon what, if any, physical property was that transaction based?

(Deposition of Harold G. Heaton.)

A. All physical properties utilized in connection with the operation of Libby's Yakutat salmon cannery, including but not limited to, docks, buildings, land, railroad, and fishing sites, some of which were not in the confines of the City of Yakutat.

Inter. 34. What was the purchase price paid by Bellingham Canning Company to Libby for that transfer?

A. The purchase price paid by Bellingham Canning Company was \$120,000 for all fixed assets. This sum covered [15] not only the Real Property listed above but also machinery and equipment, trucks, tools and moveables, furniture and fixtures, floating equipment and ships. All trackage and railroad rights and property outside as well as inside the town and U. S. Survey #179 and other properties at Dry Bay outside the town.

/s/HAROLD G. HEATON,

Witness. [16]

Certificate

State of Washington,
County of King—ss.

I, E. E. Lescher, a Notary Public in and for the State of Washington, residing at Seattle, pursuant to Notice of Taking Deposition, hereto annexed, do hereby certify that on the 12th day of December, 1952, at the hour of 10:00 o'clock a.m., at my office

(Deposition of Harold G. Heaton.)

in the Central Building, Seattle, Washington, personally appeared Harold G. Heaton, a witness on behalf of the Objectors, for the purpose of giving his deposition upon written examination upon the direct interrogatories hereunto attached, in accordance with the Federal Rules of Civil Procedure at the hearing upon applicant's Application and objectors' Objections herein.

The above-named witness being by me first duly sworn to testify the truth, the whole truth and nothing but the truth, in answer to the written interrogatories submitted to him, deposed and said as in the foregoing deposition set out.

I Further Certify that the said Harold G. Heaton has read the said deposition given by him herein, and in my presence has subscribed his name thereto as being his true and correct testimony as given on said deposition, after said deposition was reduced to typewriting by me; and the original of the same has been retained by me for the purpose of sealing up and directing the same to the clerk of the above-entitled court. [17]

I Further Certify that I have held this deposition proceeding open until today at Objectors' request but having been advised by them that applicant has filed or served neither objections nor cross-interrogatories I have today closed it.

I Further Certify that I am neither counsel nor attorney nor a relative or employee of counsel or

(Deposition of Harold G. Heaton.)

attorney of either the applicant or of any of the objections, and also I am not interested in this matter.

Witness My Hand and Official Seal at Seattle, King County, Washington, this 13th day of December, 1952.

[Seal] /s/ E. E. LESCHER,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed December 17, 1952. [18]

[Title of District Court and Cause.]

NOTICE OF FILING OF H. G. HEATON'S
DEPOSITION

To the City of Yakutat, Alaska, and its Attorney
William L. Paul, Jr.

You are hereby notified that the deposition of H. G. Heaton, on written interrogatories, taken on behalf of Objectors on December 12, 1952, in Seattle, Washington, before Court Reporter and Notary Public E. E. Lescher, has today been filed with the Clerk in the above proceedings.

Dated at Juneau, Alaska, December 17, 1952.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed December 17, 1952.

[Title of District Court and Cause.]

MOTION FOR ENTRY OF JUDGMENT BY
DEFAULT UNDER RULE 37(d)

Objectors move for entry of judgment by default against the applicant under Rule 37(d) upon the ground that applicant has failed to serve upon them its answers to their interrogatories submitted to it under Rule 33, which interrogatories were properly served upon applicant on November 21, 1952, nor has applicant filed its answers to said interrogatories or any of them.

This motion is based upon the records and dockets of the above-entitled proceedings.

Dated at Juneau, Alaska, December 12, 1952.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

Notice

To the City of Yakutat, Alaska, and its attorney
Wm. L. Paul, Jr.:

You are hereby notified, in accordance with Rule 55(b)(2), that Objectors will present the foregoing motion to the above-entitled Court at 10 o'clock a.m., December 22, 1952, in the Federal-Territorial Court-house, in Juneau, Alaska, or as soon thereafter as the Court will hear the same, and then apply for

entry of judgment by default against you, The City of Yakutat, Alaska.

Dated at Juneau, Alaska, December 18, 1952.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed December 18, 1952.

[Title of District Court and Cause.]

Minutes of December 19, 1952

This case came on for hearing of objectors' Motion for Production of Documents. Wm. L. Paul, Jr., for City of Yakutat; R. E. Robertson for Objectors. After argument of counsel, the Court granted the motion. Objectors offered to pay the transportation expense of the records.

Subscribed and sworn to before me this December 22, 1952, at Juneau, Alaska.

[Seal] /s/ IRENE R. ERICKSON,
Deputy Clerk of the Court.

[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME

Applicant moves for an extension of time within which to answer objectors' interrogatories and request for admissions to the close of business December 22, 1952; and for grounds states that applicant's attorney has diligently attempted to secure the information desired from his clients at Yakutat and it was not until three days ago that the same was received, the delay being due to the distances involved and the extensive research requested by objectors in order to make adequate answer; and applicant's attorney has already typed the rough draft of answers and can have the final form for filing on December 22, 1952.

This motion was not made previously because since the return of the Court to this City, applicant's attorney has been so heavily involved in trial work before this Court as to make it impossible to apply earlier.

No delay injurious to the parties will occur by the granting of this motion.

December 19, 1952.

/s/ WILLIAM L. PAUL, JR.,
Applicant's Attorney.

[Endorsed]: Filed December 19, 1952.

[Title of District Court and Cause.]

APPLICANT'S ANSWERS TO OBJECTORS'
REQUEST FOR ADMISSION DATED NO-
VEMBER 21, 1952

United States of America,
Territory of Alaska—ss.

William L. Paul, Jr., being first duly sworn, on oath deposes and says that he is municipal attorney for applicant and makes these answers to Objectors' Request for Admission under Rule 36, dated November 21, 1952:

1. Yes.

2. Yes. Although the question and answer are immaterial since the Board of Equalization has a right to act as its own assessor.

3. Yes.

4. Yes, except as to Paragraph Arabic "A," we object to the materiality, relevancy, and competency of this item because a telegram does not constitute evidence usable by a Board of Equalization.

5. Yes, although we object to Item #5 Arabic A for the same reason as stated with respect to Paragraph 4, Arabic "A." As to item 5, "D," we object to the materiality, relevancy, and competency of this item on the ground that it seeks to elicit evidence of compromise.

6. Yes.

7. Yes.

8. Yes.

9. We object to this item on the ground that it

seeks to elicit evidence of compromise and hence is incompetent, irrelevant, and immaterial.

10. No, for the reason that in 1949-1950 Libby, McNeill & Libby planned to operate the cannery and the closure was not permanent.

11. This is denied because we do not have information sufficient to form a belief except that we deny that there was any substantial reduction in inventory of stock supplies although there might have been a slight reduction up to January 1, 1951.

12. Applicant denies the materiality of the removal of two Star boats, three Y boats, skiffs, and fishing gear. Also we object to the materiality of canning machinery and equipment on the ground that same was not owned by objector but by American Can Company. As to the remaining items, we do not have sufficient information on which to base a belief.

13. Applicant does not have sufficient information on which to base a belief, and hence denies.

14. This request is immaterial because Yakutat & Southern Railway was a corporation wholly owned by its parent Libby, McNeill & Libby.

15. This request is immaterial because Libby, McNeill & Libby was the parent of a wholly owned subsidiary Yakutat and Southern Railway.

16. We believe that Bellingham Canning Company purchased the land involved about May 5, 1951, and hence owned some of the property from that date to the end of the 1951 tax year or June 1.

17. Yes.

18. Yes.

19. Yes.

20. A small portion of the dock was removed, but the over-all value of the property was not changed.

21. Yes.

22. We admit the payments, but object to the materiality of the payments if this evidence is to be used as evidence of compromise, accord and satisfaction or estoppel on the ground that a city has no power to compromise a tax claim.

23. Same answer.

24. Same answer.

25. Same answer.

26. Same answer.

/s/ WILLIAM L. PAUL, JR.

[Endorsed]: Filed December 22, 1952.

[Title of District Court and Cause.]

APPLICANT'S ANSWERS TO OBJECTORS'
INTERROGATORIES OF NOVEMBER 21,
1952

United States of America,
Territory of Alaska—ss.

William L. Paul, Jr., being first duly sworn, on oath deposes and says that he is municipal attorney for applicant and makes these answers to objectors' interrogatories of November 21, 1952:

1. John G. Williams, Jr., was appointed assessor for the tax year 1950. His address is "Yakutat, Alaska."

2. No record is found of him taking an oath.

3. No record found.

4. The assessor was appointed by the Mayor by and with the advice and consent of the City Council.

5. We don't know insofar as our records are concerned.

6. Yes. We believe that he adopted the same valuations as for the previous year.

7. Same answer.

8. We believe that the same list for 1950 was used for 1951. We have carried over generally the valuations for 1949 into 1950 and 1951 unless some protest was presented with creditable evidence that a different figure should be used.

9. No record.

10. Insofar as an assessment list for 1950 and the book is concerned, the same figures have been used as were used in 1949 except insofar as has already been answered. This book was carried on through 1950 and is at Yakutat, Alaska, in the custody of the Clerk, Edward G. Johnson.

11. Yes.

12. The description of the property is the same as it always has been for tax purposes and you have this information already.

13. Yes. Along with Libby, McNeill & Libby.

14. Same answer as to Interrogatory #12.

15. Bellingham Canning Company was not named because the transfer occurred about three

weeks before the end of the tax year and we did not learn of the transfer until after the tax year for 1951 began, but if you want to make some adjustment on the basis of those three weeks we understand you have entered into an agreement between Libby and Bellingham on this three weeks' period which would make the payment equitable.

16. None.

17. No.

18. No answer required in view of previous answers.

19. No.

20. The only oath taken by anyone here by members of the City Council generally to perform their duties faithfully, honestly and impartially.

21. No answer required.

22. No answer required.

23. The property was inspected by the assessors shortly before the meetings of the Board of Equalization.

24. Yes. Shortly before the meetings of the Board of Equalization and the written record is the same for previous years.

25. Yakutat, Alaska, and assessed in the same manner as before, of which you already have a record as to the method of assessing and the amount.

26. Yes. Addresses: Yakutat, Alaska.

27. No affidavit.

28. Yakutat, Alaska.

29. Yes.

30. You already have a description of the property.

31. No.

32. None.

33. No.

34. None.

35. The City Council made the assessment for 1951.

36. At the times of the meetings of the Board of Equalization the assessment was made for 1951. We believe that substantially all the members of the City Council attended such meetings which were held probably in the school house, and probably a partial written record was kept of such meetings, depending upon the importance of the occasion. All such records are at Yakutat in the custody of the Clerk now.

37. Yes.

38. The Minute Book of the City of Yakutat has already been delivered to you and you have had as much opportunity as you wanted to examine the same, and we think you can see for yourself since this is the exclusive minute book of applicant.

39. Same answer for 2½ pages of questions.

40. Already answered.

41. Yes. The Trustees officially directed a City Clerk to post the notices of delinquent taxes. Such official posting is required by ordinance of which the objectors already have a copy, describing the time, manner and places of such posting and the requirement thereof.

42. No, except insofar as the next previous answer indicates a direction.

43. Already answered.

44. Already answered.

45. Already answered.

46. The same ordinance referred to last, directs the City Clerk to make such an application to the Court without reference to the Common Council, and it was on this basis that application was made.

47. Already answered.

48. Already answered.

49. That in addition to posting the Notice of Presentation of Delinquent Tax Roll to the District Court, at the Yakutat Post Office it was also posted at Mallott's Store on Bayview Street, near the center of town of the City of Yakutat, and on the front of the store of the Bellingham Canning Co., which is on the south side of the City of Yakutat. Such Bellingham Canning Company store being the other large store trading in general merchandise in the City of Yakutat, and the notices were posted on August 9, 1952, by John G. Williams, Jr., address, Yakutat, Alaska.

50. No designation was necessary since it is up to the City Clerk to follow the instructions of the ordinance, last above mentioned, to post in four of the most conspicuous public places in Yakutat, Alaska, and while the three places that he did choose are the most public conspicuous places in Yakutat, Alaska, he claims that there was no fourth place. By this he probably means that there was no fourth place. By this he probably means that there was no fourth place protected from the water where the notice could stay up for a substantial length of time.

In addition one of the notices posted on owner's property and constituted actual Notice of Presentation of Delinquent Tax Roll to Court in this proceedings.

51. Already answered.

52. Already answered.

53. Already answered.

54. Answer refused on the grounds that we are not concerned with personal property in this proceeding.

55. The valuation was made on the same basis as was made by Felix Toner in February, 1950. You already have the information as to Mr. Toner's method of assessment and manner. If you want the Court to take judicial notice of Mr. Toner's previous evidence in matters between us we hereby consent to join in such a request.

56. You have a description of your property already or the property which you recently owned, and that is the property we referred to in the valuation.

57. We went into this matter thoroughly in the previous cases against you in this Court, and the breakdown of figures would be the same as in the previous cases.

58. The amount claimed due of \$2,021.20 is the deficiency of tax in growth of 16 mills of realty and personalty of Bellingham Canning Company, the gross amount of tax is thus a simple matter of computation from which the amount of Bellingham Canning Company has actually paid, when deducted, leaves a balance due of \$2,021.20 principal amount

of tax. This means that Bellingham Canning Company has paid its personal property tax and total based upon a \$94,000 valuation and the balance of the tax claimed is attributed to the personalty.

59. The same method of computation as is set forth in paragraph #58.

The only thing further we can add is that a small portion of the dock was removed in 1951, we believe, and this was taken into consideration by the Board of Equalization meeting that year. We also received one letter of postponement of meeting after posting, but no good information could be got to be considered by the Board of Equalization.

/s/ WILLIAM L. PAUL, JR.

Subscribed and sworn to before me this December 22, 1952, at Juneau, Alaska.

[Seal] /s/ IRENE R. ERICKSON,
Deputy Clerk of the Court.

[Endorsed]: Filed December 22, 1952.

[Title of District Court and Cause.]

OBJECTORS' MOTION TO STRIKE

Objectors move to strike Applicant's motion for extension of time to answer Objectors' Interrogatories and Requests for Admissions because (1) said motion was served and filed without any notice of the time of presentation thereof as required by

Rules 33 and 36; (2) said motion was served and filed after Objectors had served and filed their motion for entry of judgment under Rule 37(d); and (3) said motion states no cause for relief under Rule 60(b).

Objectors, also, move to strike Applicant's Answers to Objectors' Request for Admissions because (1) said Answers were not sworn to under oath by an official of Applicant; (2) said Answers were filed on December 22, 1952, without the Court's permission and more than 10 days after service of said Request on November 21, 1952, and in utter disregard of Rule 36 as to time, manner, and form of response; and (3) Objectors further move to strike Answers 23, 24, 25 and 26 because they are unintelligible, and Answers 1, 12, 13, 14 and 15 because they are insufficient in that neither immateriality nor lack of knowledge constitutes an objection or response to a Request.

Objectors, also, move to strike Applicant's Answers to Objectors' Interrogatories because (1) said Answers were not sworn to under oath by an official of Applicant; (2) said Answers were filed on December 22, 1952, without the Court's permission and more than 15 days after service of said Interrogatories on November 21, 1952, and after Objectors had served their motion for entry of judgment by default under Rule 37(d) and while that motion was still pending and without any relief having been granted to Applicant under Rule 60(b) and in utter disregard of Rule 33 as to time, manner, and form

of answer; and (4) Objectors move to strike Answers 5 to 59, inclusive, because they are insufficient, contumacious, and do not answer the respective interrogatories separately and fully under oath.

Dated at Juneau, Alaska, December 23, 1952.

ROBERTSON, MONAGLE &
EASTAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

Notice

To Applicant and Its Attorney, William L. Paul,
Jr.:

Objectors will present the above motion to the above-entitled Court in Juneau, Alaska, at 10 a.m. December 29, 1952, and request the Court to then, or as soon as thereafter is convenient to the Court, hear it.

Dated at Juneau, Alaska, December 23, 1952.

ROBERTSON, MONAGLE &
EASTAUGH,

By /s/ R. E. ROBERTSON,
Attorneys for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed December 24, 1952.

[Title of District Court and Cause.]

MINUTES—MONDAY, DECEMBER 29, 1952

This case came before the Court for hearing on Objectors' Motion for entry of Judgment by Default; on Petitioner's Motion for an Extension of Time to Answer Interrogatories and on Objectors' Motion to Strike Motion for Extension and to strike Petitioner's Answers to Objectors' Request for Admission. Wm. L. Paul, Jr., for Petitioner; R. E. Robertson for Objectors. Counsel presented their arguments and the matter was taken under advisement.

Later this day the Court ruled as follows: Objectors' motions for default and to strike are denied. Treating Petitioner's Motion for Extension of Time as a Motion to allow filing of Answers to Interrogatories, motion is granted.

Thereupon Court was adjourned until tomorrow morning at 10 o'clock.

[Title of District Court and Cause.]

MOTION TO SUPPRESS APPLICANT'S
ANSWERS TO OBJECTORS' INTERROG-
ATORIES

Objectors move to suppress Applicant's hereinafter respective Answers to their Interrogatories and to require Applicant to further answer them

because each of them is insufficient for the reasons hereinafter respectively stated, viz.:

Answer 2. Evasive, and does not answer Interrogatory.

Answer 3. Evasive, and does not answer Interrogatory.

Answer 4. Evasive, and does not answer Interrogatory.

Answer 5. Evasive, and does not answer Interrogatory.

Answer 6. Evasive, and does not answer Interrogatory, except the first sentence therein.

Answer 7. Evasive, and does not answer Interrogatory, nor does it identify what it means by "same answer."

Answer 8. Evasive, and does not answer Interrogatory, and volunteers a legal conclusion.

Answer 9. Evasive, and does not answer Interrogatory.

Answer 12. Evasive, contumacious, and does not answer Interrogatory.

Answer 14. Evasive, contumacious, and does not answer Interrogatory.

Answer 15. All of it's volunteered except the words "Bellingham Canning Company was not named," and surplusage.

Answer 17. Unintelligible, contumacious, and does not answer Interrogatory in such manner as to state whether Board of Trustees elected to and made tax assessments, or whether that Board appointed an assessor to make the tax assessments.

Answer 18. Unintelligible, contumacious, and does not answer Interrogatory.

Answer 23. Fails to answer Interrogatory in full, or explain why can't answer remainder.

Answer 24. Fails to answer Interrogatory in full, or explain why can't answer remainder.

Answer 25. Unintelligible, contumacious, and does not answer Interrogatory in full, or explain why can't answer remainder.

Answer 26. Fails to answer Interrogatory in full, or explain why can't answer remainder.

Answer 30. Contumacious and does not answer Interrogatory.

Answer 36. Fails to answer Interrogatory in full, or explain why can't answer remainder.

Answer 38. Contumacious, surplusage, volunteered, and does not answer Interrogatory.

Answer 39. Unintelligible, contumacious, and does not answer Interrogatory.

Answer 40. Unintelligible, contumacious, and does not answer Interrogatory.

Answer 50. Unintelligible, contumacious, surplusage, volunteered, and does not answer Interrogatory.

Answer 51. Unintelligible, contumacious, and does not answer Interrogatory.

Answer 52. Unintelligible, contumacious, and does not answer Interrogatory.

Answer 53. Unintelligible, contumacious, and does not answer Interrogatory.

Answer 54. Contumacious, sham, frivolous, and does not answer Interrogatory.

Answer 55. Fails to answer Interrogatory, and is contumacious, volunteered, and surplusage.

Answer 56. Unintelligible, contumacious, volunteered, surplusage, and fails to answer Interrogatory.

Answer 57. Unintelligible, contumacious, volunteered, surplusage, and fails to answer Interrogatory.

Answer 58. Unintelligible, and fails to answer Interrogatory.

Answer 59. Unintelligible, fails to answer Interrogatory, and is volunteered and surplusage.

Dated at Juneau, Alaska, January 7, 1953.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed January 7, 1953.

[Title of District Court and Cause.]

MINUTES—FRIDAY, MARCH 27, 1953

This matter came before the Court for argument on Objectors' Motion to Suppress Applicant's Answers to Objectors' Interrogatories. Wm. L. Paul, Jr., for Applicants; R. E. Robertson for Objectors. The motion was sustained except as to Answer No. 4. Respondent was granted 2 weeks to respond with proper answers.

[Title of District Court and Cause.]

APPLICANT'S AMENDED ANSWERS TO
OBJECTORS' INTERROGATORIES OF
NOVEMBER 21, 1952

United States of America,
Territory of Alaska—ss.

Edward G. Johnson, being first duly sworn, on oath deposes and says that he is the clerk of applicant and makes these amended answers to Objectors' Interrogatories of November 21, 1952:

1. John G. Williams, Jr., was appointed assessor by applicant for the tax year 1950. His address is Yakutat, Alaska.

2. I don't know whether he took an oath in writing. Our records have been searched and we do not find any oath in writing. I have inquired of him and he says he was just appointed by the Council and Mayor, and no oath was taken.

3. No oath is to be found among the applicant's records and it is believed that no such oath was ever filed with applicant.

4. The assessor was appointed by the mayor by and with the advice and consent of the City Council. The meeting of the City Council at which such appointment was made was on 6th day of November, 1950, and a written record was made of the business transacted at such meeting, including the appointment of such assessor and the book in which such written record was entered is in the only record book the City of Yakutat has, namely, the book that

has all ordinances, minutes and resolutions entered in it. This book is at present in the custody of the present City Clerk, Edward Johnson; address, Yakutat, Alaska.

5. Yes, the assessor did inspect the property of Libby, McNeill & Libby and Yakutat and Southern Railway during the tax year 1950. His inspection was on or about the day of June, 1950.

6. Yes, the assessor did assess the property of Libby, McNeill & Libby during the tax year 1950. The date of assessment was on or about the day of June, 1950, and the written record appears in the Assessment Roll which is presently in the custody of the City Clerk. The property was assessed in a lump sum dividing personalty and realty. There is only one parcel. The amount of the assessment is as follows: Land, \$11,000.00; Improvements, \$176,625.00; Personal, \$94,000.00. Totals, \$281,625.00.

7. Same answer as for #6. The division between Yakutat & Southern Railway and Libby, McNeill and Libby was not made because it is impossible to distinguish the property of each. No division was made also because Yakutat and Southern Railway is a wholly owned subsidiary of the parent corporation Libby, McNeill & Libby.

8. We have an assessment roll. There was only one assessor for the tax year 1950.

9. I do not believe that any affidavit to the assessment roll of 1950 was made.

10. The assessment roll of 1950 is in the custody of the present City Clerk, Edward Johnson.

11. Yes, Libby, McNeill and Libby is named in the assessment roll for 1950.

12. The property of Libby, McNeill and Libby described in the assessment roll for 1950 is as follows: Land, \$11,000.00; Improvements, \$176,625.00; Personal, \$94,000.00.

13. The property of Yakutat and Southern Railway is combined with that of Libby, McNeill & Libby on the assessment roll for the reasons above stated.

14. Already answered.

15. Bellingham Canning Company was not named because the transfer from Libby, McNeill & Libby and Yakutat and Southern Railway occurred about three weeks before the end of the tax year and we did not learn of the transaction until after the tax year for 1951 began. If objectors want to make some adjustment on the basis of these three weeks on the basis of objectors' agreement with Bellingham Canning Company for this period, the same is perfectly agreeable to the applicant.

16. No property is described on the assessment roll as being owned by Bellingham Canning Company for the tax year 1950 for the reason above stated.

17. No, the Board of Trustees did not make the assessment for the tax year 1950, but appointed an assessor to do so.

18. No answer required.

19. No assessor was appointed for the tax year 1951.

20. No answer required.

21. No answer required.

22. No answer required.

23. Yes, the assessor did inspect Bellingham Canning Company and Yakutat and Southern Railway for the tax year 1951. Inspection was shortly before the meeting of the Board of Equalization for both.

24. The property was inspected by the Board of Equalization acting as assessors shortly before the Board of Equalization meetings began. The date of the meeting of the Board of Trustees which later resolved itself into a Board of Equalization at which the assessments was made, was 12th day of November, 1951. The meeting was held at A. N. B. Hall office, Yakutat, Alaska. A written record was made of the business transacted at such meeting, although there does not formally appear that the Board made an appointment of itself as assessor. The book in which these facts appear is stated above and its present location is that it is in the custody of Edward Johnson, City Clerk, at Yakutat, Alaska.

25. Assessment of Yakutat & Southern Railway for the tax year 1951 was not made because by that time Bellingham Canning Company owned substantially all of the property.

26. Yes, the assessor did make a list, being in the same book which we call the Assessment Roll. The Assessment Roll provides for several years going into one book and generally these are carried on from year to year at just about the same figures unless some change is made. Insofar as the new figures being entered in the same book I think that

was done by the City Clerk for the tax year 1951. I don't know the date when these entries were made, but I think it was shortly before the Board of Equalization meeting above mentioned.

27. No affidavit was made to the assessment roll for the values of the tax year 1951.

28. The assessment roll for the tax year 1951, which is the only list or book we have, is in the custody of the City Clerk, Edward Johnson; address, Yakutat, Alaska.

29. Yes, the Bellingham Canning Company was named in the assessment roll for 1951.

30. The property assessed to Bellingham Canning Company for the tax year 1951 on the assessment roll appears in substantially the same categories as for Libby, McNeill & Libby, and Yakutat and Southern Railway and is described as follows: Land, \$11,000.00; Improvements, \$176,625.00; Personal, \$94,000.00. Totals, \$281,625.00.

31. No, Yakutat & Southern Railway was not named in the Assessment Roll for 1951.

32. No answer required.

33. No answer required.

34. Already answered.

35. The City Council made the assessment for the tax year 1951, it being its selection so to do.

36. The assessment was made by the City Council at its meeting of the 12th day of November, 1951. The roll call shows the following members of the City Council present: Sheldon, James, Jr.; Ben Peterson, James Whiting, Bernard Henniger. The meeting was held at the School House. A partial

written record of such meeting was kept. The nature of such written record is of the proceedings occurring at such meeting. The present custodian of such records is the City Clerk, Edward Johnson; address, Yakutat, Alaska.

37. Yes, the objectors set out in their Interrogatory #37 what appears in the minute book an official record of the City of Yakutat, a true statement.

38. I have answered Interrogatory #37 in the affirmative and state that there is no other record of entry or statement relative to an assessor than what appear from the so-called minute book of the City of Yakutat.

39. The official minute and record book of applicant which includes minutes of the Board of Equalization from October 2, 1948, through October 6, 1952, do not show any statements or entries relative to assessments of Libby, Yakutat & Southern Railway, and Bellingham Canning Company other than those stated in Interrogatory #39.

40. I have answered #39 in the affirmative. This is no other record book of the proceedings of the Board of Trustees and the Board of Equalization of the City of Yakutat.

41. Yes, the Trustees officially directed the City Clerk to post the notices of delinquent taxes in the manner prescribed by the tax ordinance of the City of Yakutat.

42. No special order was given to the City Clerk to post the notices except that the tax ordinance requires the Clerk to do so.

43. No special order is necessary to the City Clerk to post the notices since such order appears in the tax ordinance.

44. Already answered.

45. Yes, there was a written record kept of the meeting which adopted the tax ordinance and the amendments to tax ordinance directing the City Clerk to perform duties of posting notices of delinquent taxes. This record is kept in the same minute book above mentioned. It is in the custody of the City Clerk, Edward Johnson; address, Yakutat, Alaska.

46. Yes, the order was given to have the application filed in the District Court at Juneau. The order appears in the tax ordinance and no special further order is necessary or was made.

47. The direction to file the application was made by means of the meeting which adopted the tax ordinance and the amendments to the tax ordinance. The tax ordinances and amendments were adopted on the following dates: Original ordinance on July 3, 1948, and Amendment May 5, 1952, and the names and addresses of the trustees attending those meetings are as follows: Ben Peterson, James Whiting, Herbert Bremner, Sheldon James, Jr.

48. Yes, a written record was kept of business transacted at the meetings at which the tax ordinances and amendments were adopted. This record appears in the minute book above described which is in the custody of the present City Clerk, Edward T. Johnson; address, Yakutat, Alaska.

49. The three conspicuous places other than

Yakutat Post Office at which applicant's notice of delinquent taxes on real property was posted, and the date of posting, and the name and address of the person making such posting are as follows: Bellingham Canning Co., Mallott's General Store; dates of posting not remembered; posting done by John G. Williams, Jr.

50. No special designation was made as to the three places.

51. The designation appears in the tax ordinances that they are to be the four most conspicuous public places in the City of Yakutat, and no more particular places appear than that.

52. This question is already answered in the sense that a designation was made in the tax ordinances.

53. This question is already answered in the sense that the designation was made by means of the tax ordinances.

54. The property covered by the word "personal \$94,000" in the applicant's notice of delinquent taxes includes inventory, supplies, fixtures, machinery that has become part of the realty by being fastened down, plumbing, electric wiring, but does not include machinery fastened down leased from American Can Company.

55. Each individual building was not assessed separately, although during the computation arriving at the figure of frame buildings \$176,625 each building was segregated.

56. The item "frame buildings \$176,625" are those buildings appearing on the land now owned

by Bellingham Canning Company. The same segregation was made as appears in the evidence in that certain cause entitled "In re Yakutat Delinquent Tax Roll for 1948-1949."

57. Already answered.

58. We arrive at the figure \$2,021.20 as follows: The gross assessed valuation multiplied by the millage rate less the amount paid by Bellingham Canning Company, plus 12% penalty on the balance, plus 12% annual interest to date on the balance of tax plus penalty.

59. The method of computation for the figure \$1,639.65 is the same as stated in answer #58.

/s/ REV. EDWARD G. JOHNSON.

Subscribed and sworn to before me at Yakutat, Alaska, this 8th day of May, 1953.

/s/ JOHN G. WILLIAMS, JR.,
Postmaster.

Receipt of copy acknowledged.

[Endorsed]: Filed May 11, 1953.

[Title of District Court and Cause.]

MOTION FOR TRIAL

It appearing from the files and records of this Court and cause that this matter is at issue, applicant moves that the same be set down for trial and suggests May 7, 1954, at 10 a.m.

February 27, 1954.

/s/ WILLIAM L. PAUL, JR.,
Applicant's Attorney.

cc. R. E. Robertson,
Attorney for Objectors.

[Endorsed]: Filed March 4, 1954.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT AND MOTION FOR JUDGMENT ON THE PLEADINGS

Objectors move for a summary judgment under Rule 56 FRCP and for judgment on the pleadings under Rule 12 *ibid*.

These motions are based upon the records, files, and dockets of this case, and upon the letter of September 8, 1953, of the counsel of the City of Yakutat to Objectors' attorney, a copy of which letter was sent by said City of Yakutat's attorney to the Clerk of the above-entitled Court according to the notation on the original thereof.

Dated at Juneau, Alaska, April 17, 1954.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

To the City of Yakutat, Alaska, and its attorney,
William L. Paul, Jr.:

You are hereby notified that Objectors will present their motion for judgment on the pleadings on the first regular call of the motion calendar, and its motion for a summary judgment 10 days after service hereof, or as soon thereafter as the Court may be pleased to hear it.

Dated at Juneau, Alaska, April 17, 1954.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed April 19, 1954.

[Title of District Court and Cause.]

MINUTES—FRIDAY, APRIL 23, 1954

Upon the calling up of this case for hearing on a Motion to set for Trial, and a Motion for Judgment on Pleadings, Mr. Paul moved for this case to be set over and a day set for hearing. Mr. Robertson concurred. It was set for hearing on Wednesday, April 28th.

[Title of District Court and Cause.]

AFFIDAVIT ON MOTION FOR SUMMARY
JUDGMENT AND JUDGMENT ON PLEAD-
INGS

United States of America,
Territory of Alaska—ss.

William L. Paul, Jr., being first duly sworn, on oath, deposes and says that he is municipal attorney for applicant, City of Yakutat, in this matter; and that he makes this affidavit on behalf of plaintiff in opposition to the objectors' motion for summary judgment and judgment on the pleadings.

Objectors have paid applicant a sum more than sufficient to satisfy their personal property taxes, and such sum has been applied by applicant to pay said personal property taxes, penalty and interest, and there is nothing due thereon; and this matter concerns on real property taxes, interest and penalty.

/s/ WILLIAM L. PAUL, JR.

Subscribed and sworn to before me this April 26,
1954.

[Seal] /s/ P. D. E. McIVER,
Deputy Clerk of the Court.

Receipt of copy acknowledged.

[Endorsed]: Filed April 26, 1954.

[Title of District Court and Cause.]

MINUTE ENTRY OF APRIL 28, 1954

This case came before the court for hearing on a Motion to Set for Trial and for Motion for Summary Judgment. Wm. L. Paul, Jr., for Applicants; R. E. Robertson for Protestants. Counsel presented their arguments following which the court took the matter under advisement. In Cause No. 6581-A the court set Mr. Robertson's Motion for Judgment on the Mandate for hearing on the next Motion Day.

Thereupon court was adjourned till tomorrow morning at 10 o'clock.

[Title of District Court and Cause.]

MINUTE ENTRY OF APRIL 30, 1954

The court having heard counsels' arguments on the Motions herein, at this time ruled that said motions for Judgment would be denied.

[Title of District Court and Cause.]

MINUTE ENTRY OF MONDAY, MAY 10, 1954

This matter came on for trial before the Court. Wm. L. Paul, Jr., appeared for Petitioner, City of Yakutat; R. E. Robertson appeared for Objectors, Libby, McNeill & Libby, Yakutat & Southern Ry. and Bellingham Canning Co. Petitioner proceeded by calling Dorothy Henry, City Clerk of Yakutat,

who was sworn. The Duplicate Delinquent Tax Roll for the City of Yakutat for the years 1950 and 1951 was offered in evidence and to which Mr. Robertson objected. After argument it was admitted in evidence as Ex. 1, subject to the objection. Page 5 of an Assessment Book was admitted as Ex. 2, with leave to substitute a photostatic copy in lieu of the original page. Petitioners stipulated that Protestants' objections Nos. 1, 3, 4 and 9, were admitted. Edward G. Johnson's Amended answers to interrogatories, dated Nov. 21, 1952, were admitted in evidence. Counsel stipulated that Objectors' witnesses would testify that the value of the properties of the objectors hereto would be the same as reflected by paragraph 10 of the objections. It was stipulated that as of June 1, 1950, Bellingham Canning Co. did not own any property subject to tax, in Yukutat, and that its interest was acquired May 5, 1951. It was also stipulated that at the time of purchase, the Bellingham Canning Co. paid \$120,000 to Libby, McNeill & Libby for all the physical assets in the City of Yakutat. Upon the completion of the examination of the witness, Dorothy Henry, Petitioner rested. Mr. Robertson moved, in behalf of the Objectors, for dismissal of petitioner's case. Ruling was reserved.

Court was thereupon recessed till 2 p.m.

Monday, May 10, 1954 (2), 2:00 P.M.

With all parties present as at the morning session the trial in this case was resumed. Objectors introduced in evidence Edward G. Johnson's Amended Answers of May 8, 1953, to the interrogatories dated Nov. 21, 1952, numbers 1, 2, 3 and 31, also Mr. Paul's answers to Nos. 31 and 33, to same interrogatories. Also admitted Mr. Paul's answers to Request for Admission Nos. 1, 2 and 3. It was also stipulated that Ordinance No. 1 of the City of Yakutat was in force in 1950 and 1951 and amended in 1952 and thereupon the Objectors rested.

In rebuttal, petitioner called J. B. Mallott, who was sworn and testified as to an amendment to Ord. No. 1, and upon which both sides rested. Matter submitted with briefs to be filed. Each side to have 10 days and with a further 5 days for reply brief if found necessary.

[Title of District Court and Cause.]

MINUTE ENTRY OF JUNE 16, 1954

At this time the Court signed a Memorandum Decision in this case.

In the U. S. District Court for the District of
Alaska, Division Number One, at Juneau

No. 6734-A

In the Matter of:

THE DELINQUENT AND SUPPLEMENTAL
DELINQUENT TAX ROLL OF REAL AND
PERSONAL PROPERTY FOR THE CITY
OF YAKUTAT, ALASKA, FOR THE
YEARS 1950 AND 1951,

LIBBY, McNEILL & LIBBY, a Corporation, and
YAKUTAT & SOUTHERN RAILWAY, a
Corporation,

Objectors.

MEMORANDUM DECISION

I find that the objections are either lacking in merit or of such a nature as not to affect the substantial rights of the objectors and, hence, conclude that the application for an order of sale of the real property should be granted.

Done at Anchorage, Alaska, this 16th day of June, 1954.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed June 18, 1954.

[Title of District Court and Cause.]

BILL OF COSTS

Fees for witnesses (itemized on reverse side)	\$ 54.00
Attorney fee allowed by Court.....	785.14
for same to be allowed by City Clerk on order of sale auction.....	100.00
	<hr/>
Total	\$939.14

United States of America,
Territory of Alaska—ss.

I, William L. Paul, Jr., do hereby swear that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day mailed to R. E. Robertson, Attorney for objectors, with postage fully prepaid thereon.

/s/ WILLIAM L. PAUL, JR.,
Applicant, City of Yakutat.

Subscribed and sworn to before me this day
of June, A.D. 1954, at Juneau, Alaska.

[Seal] /s/ JOHN H. DIMOND,
Notary Public for Alaska.

My Commission expires 10/5/56.

Costs are hereby taxed in the amount of \$.
 this day of June, 1954, and that amount included in the judgment.

J. W. LEIVERS,
 Clerk.

(Back)

Applicant, Dorothy Henry, City Clerk

Attendance-Subsistence, 1 day \$ 4.00

Travel 1 day each way from Yakutat, 2 days 8.00

J. B. Mallott

Attendance-Subsistence, 1 day 4.00

Travel, 2 days 8.00

At 200 miles at 15c 30.00

Total \$54.00

Receipt of copy acknowledged.

[Endorsed]: Filed June 18, 1954.

[Title of District Court and Cause.]

OBJECTIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER OF SALE, AND COST BILL

Objectors, without prejudice to its objections and motions heretofore filed herein, all of which it hereby renews, object to and protest against the entry of Applicant's proposed Findings of Fact,

Conclusions of Law, Order of Sale, and Cost Bill, i.e.:

1. This Court is bound by the rule of law laid down by the United States Court of Appeals for the Ninth Circuit on the appeal to it from the Order of Sale entered by this Court on April 25, 1952, which is reported in 206 F. 2d 612, and whose opinion and mandate are res judicata herein, and this Court has no authority or jurisdiction to enter or allow said findings, conclusions, order, or cost bill.

2. Said Findings, Conclusions, Order, and Cost Bill are contrary to the law and to the evidence, and entirely ignore the fact that the preponderance of the evidence showed that the assessments for each year were over valued and over assessed, and disregard the fact that the evidence proved that the actual value of the various properties during the two years were as claimed by objectors, and disregard the fact that for neither said years were any of said taxes fairly assessed or equalized.

3. Said Findings, Conclusions, Order, and Cost Bill are based upon a duplicate delinquent tax roll which did not show and separately state and show the amount of taxes, penalty and interest due upon realty alone and lumped and stated in a single amount the taxes upon realty and personalty, and are based upon incompetent, aliunde evidence of Dorothy Henry that impeaches it.

4. Said Findings, Conclusions, Order, and Cost Bill impose upon Objector, Yakutat & Southern Railway's real property a lien for interest of 1%.

per month from February 1, 1951, to May 31, 1954, amounting to \$894.61, upon taxes and penalty for 1950, and a lien for interest of 1% per month from December 7, 1951, to May 31, 1954, amounting to \$538.44, upon taxes and penalty for 1951, whereas Applicant's tax Ordinances in effect during the tax years 1950 and 1951 did not provide or fix any rate of interest to be paid upon either delinquent taxes or penalties thereon.

5. Said Findings, Conclusions, Order and Cost Bill impose upon Objector Yakutat & Southern Railway's real property a lien for a tax of 1% per month from February 1, 1951, to May 31, 1954, upon a purported penalty of \$201.32 for 1950 and from December 7, 1951, to May 31, 1954, upon a purported penalty of \$163.16 for 1951, whereas neither Sections 16-1-121 through 130, ACLA 1949, nor any other statute authorizes the municipality to fix any interest upon any penalty for nonpayment of municipal taxes.

6. Under said Findings, Conclusions, Order and Cost Bill Applicant has applied \$2,848.80, paid by Objectors Libby, McNeill & Libby and Yakutat & Southern Railway for 1950, and \$2,866.36, paid by Objectors Bellingham Canning Company and Yakutat & Southern Railway for 1951, contrary to the respective Objectors' instructions as to the payment of those sums and the application thereof, and which sums the Applicant retained and has not returned to Objectors.

7. Said Findings, Conclusions, Order and Cost Bill impose a lien upon Objector Yakutat & Southern Railway's real property for attorney's fees of \$785.14 and for a further \$100.00 to be allowed to or by the City Clerk on order of sale auction, whereas neither Sections 16-1-121 through 130, ACLA 1949, nor any other statute authorizes an attorney's fee to be taxed as costs in these proceedings, or to make it a lien upon said Objector's real property, and that the allowance of any of said attorney's fees is contrary to the provisions of the United States Constitution, and particularly to the Fifth and Fourteenth Amendments, and constitutes a deprivation of said Objector's real property without due process of law or just compensation.

8. Said Findings, Conclusions, Order and Cost Bill impose a lien upon Objector Yakutat & Southern Railway's real property for witness fees and mileage of J. B. Mallott of \$54.00, whereas said Mallott was a spurious, unnecessary and voluntary witness and testified to no material or other fact other than in substance he said he thought he remembered another ordinance but he didn't know when it was enacted.

Dated at Juneau, Alaska, June 24, 1954.

/s/ R. E. ROBERTSON,
Of Attorneys for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed June 24, 1954.

[Title of District Court and Cause.]

MINUTE ENTRY OF JUNE 24, 1954

At this time this matter came on for hearing. Wm. L. Paul, Jr., was present for Plaintiff; R. E. Robertson for Objectors. Mr. Robertson filed Objections to Findings of Fact, Conclusions of Law, Order of Sale, and Cost Bill. After discussion, Mr. Paul asked the Court for time until 2:00 p.m. to submit authorities on Objections, which the court granted.

[Title of District Court and Cause.]

MINUTE ENTRY OF JUNE 25, 1954

This matter having been heard yesterday on Objections to Findings of Fact, Conclusions of Law, Order of Sale and Cost Bill filed by R. E. Robertson, Attorney for Objectors, the Court at this time ruled that the objections of the taxpayers to the allowance of interest on penalties and of a fee to the City Clerk, are sustained and all other objections are overruled.

[Title of District Court and Cause.]

OBJECTIONS TO ORDER OF SALE

Objectors hereby Object to the Order of Sale, which was served upon them on June 26, 1954, upon all the grounds, including but not limited to the items of monthly 1% interest on the alleged de-

linquent taxes for both of said years and to the item of "attorney's fee to applicant of \$923.40," made by them on June 24, 1954, to the proposed Order of Sale that was served upon them on June 18, 1954, and by reference thereto incorporate herein their "Objections to Findings of Fact, Conclusions of Law, Order of Sale and Cost Bill," dated June 24, 1954.

Dated at Juneau, Alaska, June 28, 1954.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

Receipt of copy acknowledged.

[Endorsed]: Filed June 28, 1954.

[Title of District Court and Cause.]

MINUTE ENTRY OF JUNE 29, 1954

As entered in Journal No. 21, Page 475. This pertains to both No. 6581-A and No. 6734-A.

At this time these matters came before the court for hearing on Objections to Order of Sale in the above-entitled cases. William L. Paul, Jr., was present in behalf of Plaintiffs; R. E. Robertson for Objectors. After argument the Court directed that in Cause No. 6581-A evidence heretofore introduced in support of objections to the Tax Roll be considered in support of the objections to the present tax roll. Thereafter the Court signed Order of Sale in each case.

MINUTE ENTRY OF JULY 27, 1954

As entered in Journal No. 21, Page 493.

Hearing on Motion for a New Trial in the above case set for 2:00 p.m. Wednesday, July 28th.

MINUTE ENTRY OF JULY 28, 1954

As entered in Journal No. 21, Page 496. This pertains to both Nos. 6581-A and 6734-A.

Objectors' Motion, on June 30, 1954, to amend or alter the Minute Order entered in Cause No. 6581-A on June 29, 1954, was allowed upon applicant's consent but subject to applicant's non-admission of any objectors' legal conclusions stated in this Objections in support of their Motion, dated June 23, 1954, to Strike Applicant's Amended Duplicate Delinquent Tax Roll for 1949, dated June 23, 1954, and without admitting the legal validity of those Objections.

Objectors' Motions for New Trial in both causes Nos. 6581-A and 6734-A, after argument of counsel, were denied.

Applicant's Application to withdraw its original municipal records on deposit with the Clerk of the Court was allowed upon applicant's agreement that it would promptly return into the custody of the Clerk such of those records as the objectors might request.

MINUTE ENTRY OF JULY 30, 1954

As entered in Journal No. 21, Page 500. This pertains to both Cases No. 6581-A and No. 6734-A.

At this time Mr. R. E. Robertson, Attorney for Objector Appellants, Libby, McNeill & Libby and Yakutat & Southern Railway, filed Notice of appeal to the U. S. Court of Appeals for the 9th Circuit under Rule 73(b) and Supersedeas on Appeal, which the Court approved, Mr. Wm. L. Paul, Jr., Attorney for Applicant-Appellee for City of Yakutat, was present and stated he had no objection to filing.

Approved and appeal allowed and order of sale stayed this 30th day of July, 1954, in Juneau, Alaska.

MINUTE ENTRY OF OCTOBER 6, 1954

As entered in Journal No. 22, Pages 38-39.

Upon consideration of the Objectors Motion for Extending Time to docket Appeal, the Court granted the motion and signed an Order thereon.

In the District Court for the Territory of Alaska,
Division Number One, at Juneau

No. 6734-A

In the Matter of:

THE DELINQUENT TAX ROLL OF REAL
AND PERSONAL PROPERTY OF THE
CITY OF YAKUTAT, ALASKA, FOR THE
YEARS 1950 AND 1951,

YAKUTAT & SOUTHERN RAILWAY, LIBBY,
McNEILL & LIBBY and BELLINGHAM
CANNING COMPANY, Each a Corporation,

Objectors.

ORDER OF SALE

This matter having come on regularly to be heard on the application of the City of Yakutat and the Objectors' objections; and the Court having considered the evidence and testimony adduced by the parties and the arguments of counsel, and being fully advised in the premises, it is by the Court:

Ordered, Decreed and Adjudged that Objectors are delinquent for a balance due on real property taxes as follows: For the tax year 1950, \$2,033.20, plus a penalty of 12%, being \$243.98, and interest at 1% monthly since the delinquent date of December 15, 1950, on balance of delinquent tax, being interest of \$874.28; and for 1951 tax year \$1,631.35, plus penalty of \$195.76 and interest since December 15, 1951, at 1% monthly on delinquent balance of

tax, being the sum of \$489.41 to date hereof; assessed against real property of objectors, being that embraced by United States Survey No. 1758 (Alaska), also known as Survey No. 2881 (Alaska); that said property be sold for the payment of the aforesaid sums, including costs of this hearing, including an attorney's fee to applicant of \$923.40 as for contested lien cases, according to local rule No. 45, said costs to be taxed by the Clerk of this Court; said sale to be at a time certain as fixed by applicant within 60 days in the manner provided by law.

Done at Juneau, Alaska, this June 29, 1954.

/s/ GEORGE W. FOLTA,
District Judge.

Copy Received June 26, 1954.

I object to entry of order until I have opportunity to present objections.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

[Endorsed]: Filed June 29, 1954.

[Title of District Court and Cause.]

SUPERSEDEAS ON APPEAL

Whereas, Yakutat & Southern Railway, a corporation; Libby, McNeill & Libby, a corporation, and Bellingham Canning Company, a corporation, the objectors in the above proceedings, have appealed

to the United States Court of Appeals for the Ninth Circuit from that certain order of sale made and entered in the above proceedings on June 29, 1954, wherein and whereby in the above proceedings the District Court for the Territory of Alaska, First Judicial Division, ordered the sale of the objectors' real property to be sold by said applicant at public sale to satisfy and discharge the lien of the taxes that are the subject of said proceedings, together with penalty and interest and costs upon said taxes and costs and disbursements of this proceeding, including an attorney fee, and from that certain order, made and entered in said proceedings on July 28, 1954, denying objectors' motion for a new trial; and,

Whereas, said objectors are desirous of staying the sale so ordered by said order of sale and so appealed from, and the Court has set, with applicant's consent, the penal amount of the supersedeas and cost bond in the sum of \$6,000.00.

Now, Therefore, in consideration of the premises and such appeal, we, Yakutat & Southern Railway, a corporation, objector; Libby, McNeill & Libby, a corporation, objector, and Bellingham Canning Company, a corporation, objector, as Principals, and the United States Fidelity and Guaranty Company, a corporation, organized and existing under the laws of the State of Maryland and engaged in and authorized to engage in business in the Territory of Alaska, as Surety, do hereby jointly and severally undertake and promise, and acknowledge

ourselves bound in the sum of \$6,000.00 that the objector corporation, Yakutat & Southern Railway; objector corporation Libby, McNeill & Libby, and objector corporation Bellingham Canning Company will satisfy in full said taxes, together with penalty and interest and costs upon said taxes, and costs and disbursements of this proceedings, as well as damages for delay, if for any reason the appeal is dismissed or if said order of sale is affirmed, and similarly to any and all extent should said order of sale be modified, and such costs, interest, and damages, as the appellate court may adjudge and award.

In Witness Whereof Yakutat & Southern Railway, a corporation, objector; Libby, McNeill & Libby, a corporation, objector, and Bellingham Canning Company, a corporation, objector, as Principals, and United States Fidelity and Guaranty Company, a corporation, as Surety, have caused these presents to be executed this 30th day of July, 1954, in Juneau, Alaska.

YAKUTAT & SOUTHERN
RAILWAY, a Corporation,
Objector;

By /s/ R. E. ROBERTSON,
Its Attorney and Agent.

Executed in the presence of:

/s/ F. O. EASTAUGH,

/s/ EILEEN ROBERSON,

LIBBY, McNEILL & LIBBY, a
Corporation, Objector;

By /s/ R. E. ROBERTSON,
Its Attorney and Agent.

Executed in the presence of:

/s/ F. O. EASTAUGH,

/s/ EILEEN ROBERSON,

BELLINGHAM CANNING
COMPANY, a Corporation,
Objector;

By /s/ R. E. ROBERTSON,
Its Attorney and Agent,
Principals.

Executed in the presence of:

/s/ F. O. EASTAUGH,

/s/ EILEEN ROBERSON.

UNITED STATES FIDELITY AND GUAR-
ANTY COMPANY, a Corporation,

By /s/ R. E. ROBERTSON,
Its Attorney-in-Fact and
Agent, Surety.

Executed in the presence of:

/s/ F. O. EASTAUGH,

/s/ EILEEN ROBERSON.

Attest: Corporate Seal.

United States of America,
Territory of Alaska—ss.

Acknowledged before me this 30th day of July, 1954, in Juneau, Alaska, by R. E. Robertson, as attorney and agent of the objector corporations, Yakutat & Southern Railway, Libby, McNeill & Libby and Bellingham Canning Company, Principals, as their free and voluntary act and deed, and as attorney-in-fact and agent on behalf of the United States Fidelity and Guaranty Company, a corporation, Surety, as the latter's free and voluntary act and deed.

Witness my hand and official seal the day and year herein first written.

/s/ FREDERICK O. EASTAUGH,
Notary Public for Alaska.

My commission expires June 10, 1958.

Approved and appeal allowed and order of sale stayed this 30th day of July, 1954, in Juneau, Alaska.

[Seal] /s/ GEORGE W. FOLTA,
Judge of the District Court for the Territory of
Alaska, Division No. 1.

[Endorsed]: Filed in open court July 30, 1954.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Defendants move for a new trial because of abuse of discretion exercised and errors committed by the Court in the conduct of these proceedings all of which appear in the dockets, files, and record of this cause, and all of which are incorporated herein by reference to said dockets, files and record, and in ignoring the provisions of Sections 16-1-121 through 130, ACLA 1949, whereby these proceedings are governed, and in not construing those statutes in favor of Objectors and against the Applicant but to the contrary in all instances either ignoring those statutes or construing them in favor of the Applicant and against the Objectors, and in denying and overruling Objectors' Motions of April 17, 1954, for Summary Judgment and for Judgment on the Pleadings, and Objectors' Objections of September 8, 1952; Objections, dated June 24, 1954, to Findings of Fact, Conclusions of Law, Order of Sale and Cost Bill, and Objections, dated June 28, 1954, to Order of Sale, and in not abiding by the principal of law announced by the Honorable United States Court of Appeals for the Ninth Circuit in *Libby, McNeill & Libby, et al., v. The City of Yakutat, Alaska*, 206 F. 2d 612, whose opinion and mandate in cause No. 6581-A are res judicata herein, and in making and entering its Order of Sale herein on June 29, 1954, notwithstanding the evidence that the Objector, Yakutat & Southern Railway, was at all times the owner of the real property involved

herein but that the said taxes, for which its real property has been ordered sold, was not assessed against it, and creating a tax lien upon its real property and thereby depriving it of its said property and in further creating a lien upon its real property for interest at 1% monthly, as stated in said Order of Sale, notwithstanding that Applicant's Tax Ordinances do not provide or fix any rate of interest against delinquent taxes, and also for an attorney's fee of \$923.40, all without due process of law and without just compensation, contrary to the Constitution of the United States, and particularly to the Fifth and Fourteenth Amendments thereof, and which Order of Sale is the result of the Court's placing throughout these proceedings the burden upon the Objectors instead of upon the Applicant without construing said statutes and any doubts of the construction of or ambiguities in them in favor of the Objectors, and ignoring the evidence that the Applicant's assessments are not actual values but are over valuations and over assessments made by Applicant in bad faith, and admitting aliunde evidence by deposition of Dorothy Henry to modify, alter and amend the Duplicate Delinquent Tax Roll presented to this Court with Applicant's application for order of sale, and ignoring the evidence that Applicant applied, without authority of law and against Objectors' consent and contrary to their written instructions, monies paid by them in full payment of all taxes for the years 1950 and 1951 upon their respective properties at their actual values, first upon per-

sonal property taxes thereby leaving purported unpaid taxes upon Objector Yakutat & Southern Railway's real property which is to be sold under said Order, which is contrary to the law and the evidence.

This motion is based upon the records, dockets, and files of this cause and upon the Official Court Reporter's notes of the various proceedings herein, and upon the Applicant's Tax Ordinances 1, 2 and 4, which are now in the custody of the Clerk of this Court, and in regard to interest upon Applicant's admission in its brief of June 24, 1954, of the ambiguity of Section 12 of its Tax Ordinance 1; and in support thereof Objectors cite, in addition to those decisions heretofore cited to the Court, the U. S. Supreme Court decisions of *Gould v. Gould*, 245 U. S. 151, 153, and *U. S. v. Merriam*, 263 U. S. 179.

Dated at Juneau, Alaska, July 2, 1954.

/s/ R. E. ROBERTSON,
Attorney for Objectors.

[Endorsed]: Filed July 2, 1954.

In the District Court for the Territory of Alaska,
Division Number One, at Juneau

No. 6581-A

In the Matter of:

The Delinquent Tax Roll, Etc., for YAKUTAT,
Etc., for 1949.

LIBBY, Etc., et al.,

Objectors.

No. 6734-A

In the Matter of:

THE DELINQUENT TAX ROLL, ETC., OF
THE CITY OF YAKUTAT, ETC., FOR THE
YEARS 1950 AND 1951.

YAKUTAT & SOUTHERN RAILWAY, LIBBY,
ETC., and BELLINGHAM, ETC.,

Objectors.

NOTICE OF HEARING BY APPLICANT ON
OBJECTORS' MOTION FOR NEW TRIAL

To the Above-Named Objectors and Their Attorney,
R. E. Robertson, Esq.:

Please take notice that applicant in the above-entitled causes will call up for hearing before the above-entitled Court at its courtroom in the Federal Building at Juneau, Alaska, at the hour of 10:00 o'clock a.m. July 26, 1954, your motions for new

trial in said causes which motions were served on applicant on July 2, 1954.

July 21, 1954.

/s/ WILLIAM L. PAUL, JR.,
Applicant's Attorney.

[Endorsed]: Filed July 21, 1954.

[Title of District Court and Cause.]

No. 6734-A

NOTICE OF APPEAL TO THE UNITED
STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT UNDER RULE 73(b)

Notice is hereby given that Yakutat & Southern Railway, a corporation; Libby, McNeill & Libby, a corporation, and Bellingham Canning Company, a corporation, the Objectors in the above proceedings, hereby appeal to the United States Court of Appeals for the Ninth Circuit from that certain Order of Sale made and entered in the above proceedings on June 29, 1954, and from that certain Order, made and entered in said Proceedings on July 28, 1954, denying their Motion for New Trial.

Dated at Juneau, Alaska, this 30th day of July, 1954.

/s/ R. E. ROBERTSON,
Attorney for Objector Appellants Yakutat & Southern Railway, Libby, McNeill & Libby, and Bellingham Canning Company.

Receipt of copy acknowledged.

[Endorsed]: Filed in open court July 30, 1954.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO
FILE AND DOCKET APPEAL

It appearing to this Court that the objecting Appellants requested the official Court Reporter on July 30, 1954, to prepare the transcript of all proceedings reported by her in the above action but that she has not yet done so and is now absent on vacation and does not contemplate returning to Juneau, Alaska, from her vacation until on or after September 10, 1954, but that Appellants' present time within which to file and docket their appeal will expire on September 9, 1954, and that it is impossible for them to so file and docket their appeal until they are furnished by the Reporter with her said transcript.

Now, Therefore, It Is Hereby Ordered that the Appellants be, and they are hereby, granted until October 10, 1954, within which to file their record on appeal and docket their appeal with the Clerk of the United States Court of Appeals for the Ninth Circuit in San Francisco, California.

Done in Anchorage, Alaska, this 31st day of August, 1954.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed September 3, 1954.

[Title of District Court and Cause.]

MOTION FOR ORDER EXTENDING TIME TO
FILE AND DOCKET APPEAL

Objectors represent that owing to pressure of work the official court reporter was unable until October 2, 1954, to transcribe and file her transcript of all the proceedings reported by her in the above action and that the Deputy Clerk in Juneau is under such pressure of work that she will not be able to prepare and certify for inclusion in the record on appeal the above Court's record in time to reach the Honorable United States Court of Appeals for the Ninth Circuit by October 10, 1954, the praecipe for which record the Objectors filed with the Clerk in Juneau in the forenoon of October 4, 1954, and that on August 31, 1954, this Court by its Order extended the time to file and docket the appeal with the appellate court until October 10, 1954, they having on July 30, 1954, served and filed their Notice of Appeal to the appellate court, and that the 90-day period within which to file and docket said appeal will not expire until October 28, 1954, Objectors move that an Order be entered herein extending the time to file and docket their appeal in the appellate court until October 28, 1954.

Dated at Juneau, Alaska, October 5, 1954.

/s/ R. E. ROBERTSON,
Of Attorneys for Objectors.

[Endorsed]: Filed October 6, 1954.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
AND DOCKET APPEAL

Objectors having made and filed herein their Motion for an extension of time until October 28, 1954, to file and docket their appeal with the United States Court of Appeals for the Ninth Circuit, and it appearing that owing to pressure of work the official court reporter was unable until October 2, 1954, to transcribe and file her transcript of all the proceedings reported by her in the above action, and that the Deputy Clerk in Juneau is under such pressure of work that she will not be able to prepare and certify for inclusion in the record on appeal this Court's record in time to reach the Honorable United States Court of Appeals for the Ninth Circuit by October 10, 1954, the praecipe for which record the Objectors filed with the Clerk in Juneau in the forenoon of October 4, 1954, and that on August 31, 1954, this Court by its Order extended the time to file and docket the appeal with the appellate court until October 10, 1954, they having on July 30, 1954, served and filed their Notice of Appeal to the appellate court, and that the 90-day period within which to file and docket said appeal will not expire until October 28, 1954,

Now, Therefore, It Is Hereby Ordered that the Objectors be, and they are hereby, granted until October 28, 1954, within which to file their record on appeal and docket their appeal with the Clerk of

the United States Court of Appeals for the Ninth Circuit in San Francisco, California.

Done in Ketchikan, Alaska, this 6th day of October, 1954.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed October 6, 1954.

In the U. S. District Court for the District of
Alaska, Division Number One, at Juneau

No. 6734-A

In the Matter of

THE DELINQUENT TAX ROLL OF REAL
AND PERSONAL PROPERTY FOR THE
CITY OF YAKUTAT, ALASKA, FOR THE
YEARS 1950 AND 1951.

YAKUTAT & SOUTHERN RAILWAY, LIBBY,
McNEILL & LIBBY, and BELLINGHAM
CANNING COMPANY, Each a Corporation,

Objectors.

REPORTER'S TRANSCRIPT OF RECORD

Be It Remembered that on the 7th day of November, 1952, court having convened at 10:00 o'clock a.m., at Ketchikan, Alaska; the Honorable George W. Folta, United States District Judge, presiding; William L. Paul, Jr., attorney for applicant, appearing; the following proceedings were had:

Mr. Paul: I have to present at this time also, your Honor, a form of order of sale In the Matter of the Delinquent Tax Rolls for 1950 and 1951 for the City of Yakutat. This is also a Juneau case. I present it at this time because it affects only those parcels of land whose owners have filed no objections. Before I left Juneau I explained to Mr. Robertson that it did not include Libby, McNeill & Libby, Yakutat & Southern Railway, or Bellingham Canning Company. [1*]

The Court: You may present it.

Thereafter on the 22nd day of December, 1952, at 10:00 o'clock a.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; the applicant appearing by William L. Paul, Jr., its attorney; the objectors appearing by R. E. Robertson, their attorney; the following proceedings were had:

The Clerk: The matter to come up now is No. 6734-A, In the Matter of the Delinquent Tax Roll for the City of Yakutat for 1950 and 1951, on objections.

Mr. Robertson: I suppose, your Honor, it is just coming up on the question of getting this motion set for entry of default. Under Rule 55 (b) I have to give Mr. Paul three days' notice of calling up, so I assume this time would be set for whatever your next regular motion calendar would be. I didn't expect it to be today. I presume that is the procedure. I didn't know.

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

Mr. Paul: This comes up for default, your Honor, on the applicant's failure to respond to interrogatories propounded by the objectors——

The Court: Didn't you have a motion?

Mr. Paul: A motion for extension of time was filed on the 19th. Since then interrogatories have been answered. They were filed this morning.

Mr. Robertson: I haven't received them this morning. [2]

Mr. Paul: They were taken over to your office about twenty minutes after nine.

Mr. Robertson: No, they weren't. I was there myself ten minutes after, in fact five, and didn't leave until twenty-five minutes after nine.

The Clerk: I have the original that was filed in the Clerk of the Court's Office this morning. They are here, and I present them at this time.

The Court: All I did was look at the motion at the top of the file, which was a motion for extension of time. I didn't know there was another motion.

Mr. Robertson: This motion was filed on the 18th. It is made under Rule 37 (d), a motion for entry of default when the person to whom the questions are propounded fails to answer, and under Rule 55 (b) I have to give three days' notice of the presentation of the motion. I served the motion on the 18th and gave this time. I presumed that at this time, I thought at this time the Court would then set it for the next motion calendar for hearing the motion.

The Court: Well, am I to understand that this

motion for extension of time is a counter motion to the one for default?

Mr. Paul: Yes; and the fact that the interrogatories have already been answered before the motion comes to hearing. My motion in defense against Mr. Robertson's motion is made [3] under the provisions of Rule 60 which relate to excusable neglect.

The Court: Well, do counsel have any time to suggest for a hearing on the motion?

Mr. Paul: I was prepared this morning, but, if counsel wishes more time——

Mr. Robertson: I haven't seen the answers. Just preliminary to taking up the motion, the statute, the rules don't give anybody the option at any time to come in and file answers. He had nearly a month. I served these on him November 21st.

The Court: We could hear them next Friday.

Mr. Paul: Perhaps a week from today then.

Mr. Robertson: That would be agreeable, your Honor.

Mr. Paul: It shouldn't take very long.

The Court: A week from today.

The Clerk: The 29th.

Thereafter on the 23rd day of April, 1954, court having convened at 10:00 o'clock a.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; William L. Paul, Jr., attorney for the applicant, and R. E. Robertson, attorney for the objectors, both appearing; upon the calling of the Motion Calendar the following proceedings were had with reference to the above-entitled cause:

The Clerk: The next matter is No. 6734-A, [4] In the Matter of the Delinquent Taxes for the Years 1950 and 1951, City of Yakutat, Plaintiff's Motion for setting for trial filed, and a motion, that is not on the calendar, filed the 19th, a motion for judgment on the pleadings. Mr. Paul and Mr. Robertson.

Mr. Paul: Your Honor, may we have a special setting for the motion for setting trial and on the motion for judgment on the pleadings, so we won't have to go over until two weeks, the next motion day, so we can have a trial setting as requested on the motion calendar?

Mr. Robertson: That is agreeable to me, your Honor, to take them at one time. I would appreciate it very much if it could be some afternoon next week, because in the mornings I am still pretty well stove up by the illness I am going through.

Mr. Paul: I would suggest the afternoon of the 28th. The Gilbrecht case is set for the morning. It is a very short case. I think it will be through by the afternoon.

Mr. Robertson: You mean these motions?

Mr. Paul: The motion for setting and for——

Mr. Robertson: I have to have time to get witnesses from Bellingham for trial if it is on the 7th of May.

The Court: Is 2:00 p.m. next Wednesday for hearing these motions satisfactory?

Mr. Paul: Yes. [5]

Mr. Robertson: Very well, your Honor.

Thereafter on the 28th day of April, 1954, court

having convened at 2:00 o'clock p.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; the applicant appearing by William L. Paul, Jr., its attorney; the objectors appearing by R. E. Robertson, their attorney; the following proceedings were had:

The Clerk: Next is the arguments in No. 6734-A, In the Matter of the Delinquent Taxes of Yakutat for the years 1950 and 1951.

Mr. Robertson: If the Court please, before that matter is presented I would like to call the Court's attention to the fact, I supposed it was submitted last fall, but the Court has never entered the judgment on the mandate from the Circuit Court of Appeals which I presented here last October. I think it ought to be signed, your Honor. It has never been signed.

The Court: If it was presented, it would have been signed.

Mr. Robertson: Anyhow, it is here and it has never been signed up.

Mr. Paul: I have some objections to that, your Honor, to the form of order.

Mr. Robertson: Judgment on mandate.

Mr. Paul: That is right, judgment on mandate. I [6] have just been waiting for counsel to call the matter up.

The Clerk: Hasn't the mandate ever been presented?

Mr. Paul: The judgment on the mandate is what he is talking about.

The Court: Has the mandate been spread on the journal of the Court?

The Clerk: That is the question I asked, may it please the Court. Is it in our file?

Mr. Robertson: It has been in your file since last fall.

The Court: Is the entry of a judgment here on the mandate necessary to this argument scheduled for this time?

Mr. Paul: I don't think so.

Mr. Robertson: I think it should be entered because after all it is a mandate that has come down from the Appellate Court.

The Court: Well, I understand that. The only question is whether it should be entered now, whether it is necessary to——

Mr. Robertson: I would like to have it entered, your Honor. The Appellate Court itself taxed \$719 against the City of Yakutat, which I have conversely wrote to Mr. Paul about months ago trying to make some kind of settlement or agreement about it, but I got no response from him, and it [7] seems to me only proper it should be entered.

The Court: Well, there isn't any question about it, but counsel here has said that he wants to object to it, and my inquiry was made with the view to determine whether it had to be entered before this argument could be heard.

Mr. Robertson: I think it is appropriate. I don't say it has to be.

The Court: I think maybe you should have filed

written objections to it if you wanted to object to it.

Mr. Paul: As soon as it is noticed for hearing——

Mr. Robertson: It shows there I gave him notice, over six months ago.

Mr. Paul: You have abandoned your notice.

Mr. Robertson: No; I never abandoned my notice at all.

Mr. Paul: What happened is this, that we have taken the money we have gotten and applied it to the personal property taxes and also gave him credit for his costs. That is what has happened. The form of order doesn't recognize that. I did respond to counsel when he asked me for my comments on the form of order. He just doesn't agree with my method of proceeding.

Mr. Robertson: That is the first time that I ever heard that he even applied anything on the costs, your Honor. This affidavit that he has made in a letter to the Clerk on [8] October 8th last, or a copy of which was sent to the Clerk, I don't recall in that that he ever made any such statement as that.

Mr. Paul: I did respond, and you protested most strongly, too, against my view.

The Court: Well, it will come up on the next motion day, and in the meantime you may file your objections to it.

Mr. Paul: Thank you.

Mr. Robertson: Mr. Paul sometime ago, your Honor, filed a motion to have this matter set for

hearing on May 7th. Rather in the hope that we could settle the matter, avoid, not settle, another expensive trial and perhaps reach it without having an actual hearing was really the motive of my motion for judgment on the pleadings and for a motion for a summary judgment. Possibly it would have been better if I had applied to the Court for a pre-trial hearing where we could come in and see what each party admitted and what they denied, but anyhow it comes up on those motions, on my motion at this time, your Honor, to that effect.

On September 8th last Mr. Paul wrote a letter to me, a copy of which he sent to the Clerk and which presumably is on file with the Clerk, and which presumably he considers now a part of the proceedings, although this is a statutory proceeding, and my understanding of it is that the procedure must be strictly followed because it is a derogation of the rights [9] of property owners, in which he said—he didn't say it in this letter of September 8, 1953, but I don't criticize him on that because my recollection isn't quite sure as to whether or not I had received the mandate at that time, although of course we had received the opinion of the Circuit Court reversing your Honor, and Mr. Paul long before that must have known that the Circuit Court denied his brother Fred's application for a rehearing.

Actually what he says is: "You should be advised that the City of Yakutat has applied the sums heretofore paid by Libby, McNeill & Libby and

Bellingham Canning Co., toward personal property taxes and the balance toward real property taxes. The present action therefore concerns only real property taxes. Kindly state when you will be ready for trial."

However, in his sworn affidavit, which he served on me day before yesterday and which was sworn to, according to the purported copy, on the 26th before the Deputy Clerk, he said: "Objectors have paid applicant a sum more than sufficient to satisfy their personal property taxes, and such sum has been applied by applicant to pay said personal property taxes, penalty and interest, and there is nothing due thereon; and this matter concerns," it means apparently "only" but it says "on," "real property taxes, interest and penalty."

Now, he doesn't say anything at all about having applied it, made some application of this as a credit on the [10] \$719 and some odd cents that the Appellate Court allowed as taxes against his client. I don't notice that it says in his letter anything about applying it on real property taxes, **which** seems to me it speaks an inconsistency right there as to his present statement to your Honor as to whether any objections he claims he made to me that it would apply on personal property taxes other than this letter of October 8th and going to apply the balance on this cost that was adjudicated to us by the Appellate Court.

Now, my position first is, your Honor, that this is a statutory proceeding, and the statute sets up what is to be done in order to enforce a lien against

real property taxes, and of course your Honor not only held in this last case but the Circuit Court at least impliedly upheld your Honor that this does not apply to personal property. Now, I submit he can't come in and avoid the statutory procedure with writing an informal letter to me and filing with the Clerk or filing a purported affidavit that so has been done, that that is not the statute, and you can't avoid the statute that way because it is strictly a satutory proceeding. .

We further contend, your Honor, that in making a payment on account of taxes the taxpayer has the right to direct its application to a particular tax or a particular piece or item of property, and a receiving officer is bound by such distribution, that is, if the receiving officer accepts [11] the payment, and that is in 84 of the article on taxation, 84 C.J.S., Paragraph 627, Page 1250, and also 61 C.J., Paragraph 1250, Page 970. And that rule, according to the general rule of payment, that, if a debtor makes a payment to a creditor and directs the application of payment and the creditor receives the payment, then the creditor—I don't mean to say receives—I mean accepts the payment, then the creditor is bound to apply it as directed by the debtor's request or otherwise return the money. That general rule is found on the article on payment.

The Court: Well, what isn't clear to me—have you done that?

Mr. Robertson: Yes, your Honor; I am getting right down to that to show you.

The Court: I didn't know.

Mr. Robertson: Now, in the objectors' requests for admissions, served and filed on November 21, 1952—I don't pass over these other questions, but I call these to your attention particularly because I think they are pertinent.

The Court: First I want to know—what is being argued here, what motion?

Mr. Robertson: I am arguing the motion for summary judgment and for judgment on the pleadings, your Honor, at the present time.

The Court: O.K. [12]

Mr. Robertson: I said that I wrote a letter or made a request for admissions in which I said: "With his letter of February 1, 1951, to applicant's City Clerk, Attorney Robertson, on behalf of Libby, McNeill & Libby and the Yakutat & Southern Railway Company, enclosed Libby, McNeill & Libby's check for \$1,699.20 for 1950 taxes on the Yakutat property of the Yakutat & Southern Railway at the rate of 16 mills upon a valuation of \$106,200.00, and Libby, McNeill & Libby's check for \$785.60 for 1950 taxes upon its property at 16 mills upon a valuation of \$49,100.00, which letter reads as follows:" I will not read the letter because I presume your Honor will want it to be set out in full there.

The 23rd question is: "Applicant received said letter with said two checks"—oh, pardon me. I better read the letter after all.

"Referring to my letter of the 20th ultimo, to which you have not yet replied," this is to the City

Clerk, Airmail—Registered, “relative to the undated tax bill which was recently received by Libby, McNeill & Libby from you in which was listed the following property and taxes, namely: Land \$11,000, Improvements \$176,125, Personal \$94,000, Totals \$281,125; Tax on the respective items \$176.00, \$2,818.00, \$1,504.00, Totals \$4,498.00.

“Presumably these taxes cover the property of both Libby, McNeill & Libby and the Yakutat & Southern Railway and [13] which you have failed to segregate and tax against the respective property owners for which reason you are hereby notified that my clients contend they are illegal, also that no proper or sufficient, if any, notice was given of the meeting, if any, of your Board of Equalization.

“My clients further protest and maintain that these taxes are unreasonably high as compared with taxes levied on other people’s property and that the valuations are not the actual fair or cash valuations of their properties; but that the actual fair cash value of Libby, McNeill & Libby’s property within your town on June 1, 1950, was \$49,100.00, and of the Yakutat & Southern Railway on that date was \$106,200.00.

“I enclose herewith check of Libby, McNeill & Libby in favor of the City of Yakutat for \$1,699.20 in full payment of the 1950 taxes on the Yakutat property of the Yakutat & Southern Railway at the rate of 16 mills upon a valuation of”—in copying this letter apparently the amount is stated incorrectly, one million and sixty-two; no; it is “\$106,-

200.00”—the comma is just misplaced; it is correct after all—“and also the check of Libby, McNeill & Libby in favor of the City of Yakutat for \$785.60 in full payment of the tax at 16 mills upon its property at the valuation of \$49,100.00.

“These remittances are tendered in full payment of these respective taxes, and you are requested to have your Board of Equalization meet and equalize the valuations upon [14] my clients’ respective property as hereinbefore stated and to officially accept these checks in full payment of the 1950 taxes on those properties.

“Please bear in mind that these checks are remitted for no other purpose than in full payment of the 1950 municipal taxes upon my clients’ respective Yakutat properties.”

Question 23 is: “Applicant received said letter with said two checks on or about February 2, 1951, and thereafter cashed said checks and accepted the proceeds thereof and has never returned the proceeds or any part of the proceeds of said two checks.”

“On February 3, 1951, Attorney Robertson wrote a letter to the Applicant’s City Clerk and enclosed therewith Applicant’s original tax notice, as stated in said letter, a copy of which letter is as follows:”—and in that I returned the tax notice which I had not returned with the previous letter that I read.

“On December 7, 1951, the Bellingham Canning Company wrote a letter to Applicant’s Board of Trustees with which it enclosed its check for \$2,866.35 for 1951 municipal taxes upon a valuation

of \$182,803.00 at 16 mills or a total of \$2,924.85, less 2% amounting to \$58.50, leaving \$2,866.35, the amount of the check. The following is a copy of said letter:

“Board of Trustees, City of Yakutat, Yakutat, Alaska.

Gentlemen: [15]

“Enclosed you will find our check in the amount of \$2,866.35, in full payment of our 1951 Municipal Taxes, broken down as follows: Valuation of \$182,803.00 at 16 mills, total of \$2,924.85 less 2% for full payment of taxes before December 15, 1951, amount of \$58.50, leaving balance of \$2,866.35 amount of our check.

“As the board will recall, we made a special trip to Yakutat, to meet with your Board of Equalization on October 30th. At that time we laid before your board our honest, true and actual figures, as to costs of property, and also our actual inventory costs figures, which total was \$182,803.00. At this meeting we gave you these figures in all sincerity, and were indeed greatly surprised when we received your valuations placed at \$281,625.00, where or how this was derived at we are unable to understand. Without any doubt the valuation as placed by us, is the actual valuation, and for this reason we have so based our tax payment to you. As we told your board, it will be necessary for you to resort to the courts for any additional amounts you may decide still due you.

“At the time that we met with your board, and also on different occasions, we have tried to make

ourselves clear, in that we intend to do all we can to help the City of Yakutat, not only as a city, but also the individual citizens of the town. In return we did expect the city to be fair in their dealings with us, and we are certainly in hopes that the tax [16] matter is not a cridel,"—I suppose it means a "critique"—"of the city's dealings with us. On two different occasions we have sent letters to your mayor, but have not even received the courtesy of a reply. Things like this makes it very hard for us to co-operate, even though our desire is to do so.

"We are sorry that this matter has come up during the first year of our operation at Yakutat, but do hope, that the City of Yakutat will realize our desire to help. Providing for a Christmas dinner for the people of Yakutat, is certainly indictative of our desire to help and share in the community life of your town.

"In closing we sincerely hope that we can all work together for a better community at Yakutat. May we also take this opportunity to wish you and the people of Yakutat, a very happy and joyous holiday season. Yours very truly, Bellingham Canning Company, Jeanice M. Welsh."

"26. Applicant cashed said check and accepted the proceeds thereof and has never paid or refunded any part of said \$2,866.35."

The City's attorney, Mr. Paul——

Mr. Paul: Your Honor, may I interject? Pardon me, counsel. If I had known the trend of counsel's argument, I would have insisted on the rule that he attach to his motion for summary judgment

a statement of his points. As it is, we are hearing about a "Merry Christmas" and going over the old [17] compromise arguments again. All these arguments have been made to the Court. Now that I see him doing that I think I ought to insist that he attach to his motion the points he relies on, according to the court rule. I thought he had something new. It is the same old stuff.

The Court: Well, I couldn't tell what this reading was in support of, what contention it is in support of.

Mr. Robertson: I am just laying the foundation.

The Court: Well, I think you ought to make your contention first so that——

Mr. Robertson: I contend, and I am going to read Mr. Paul's answers where he said they did accept these checks. They took these checks which where——

The Court: Well, why read them? Why not just state what was done? That is all I need.

Mr. Robertson: Well, your Honor asked me to, I understood.

The Court: No; I didn't ask you to read anything.

Mr. Robertson: Very well. I misunderstood you then. Mr. Paul answered these and said, yes, they accepted these checks, in his sworn answer before the Clerk on December 22, 1952; at least the copy served on me purported to be sworn to by him before the Clerk on that date, and I have never looked at the original, but I naturally presume it

is so; in which he admitted he received these checks with these letters. [18]

The Court: What about his statement that this is rehashing something that has already been disposed of?

Mr. Robertson: It is not rehashing anything at all, your Honor, because I am not arguing this at all on a point of the City's authority or lack of authority to compromise. I am arguing on the point that he has come in with a letter and later an affidavit stating that despite the specific application or the direction when these checks were forwarded, one for 1950 by me and the other by Mrs. Welsh in 1951, we directed the specific application of those checks, and he can't come in later, even a tax forum can't accept those checks, and later come in and say "we are applying them differently than according to your instructions."

The Court: Well, that is what the Court needs to know, is a statement of that. You don't have to read all this stuff. Just tell the Court what you contend.

Mr. Robertson: I want to make sure it is before the Court so the Court knows——

The Court: That doesn't make it clear to the Court. It just confuses it.

Mr. Robertson: Is it confusing to the Court now?

The Court: Well, you start reading something for a half an hour, and that has no meaning to me whatever, and without stating your contention first, and you can state your contention and I will take

your word for it that it is backed [19] up by the record, and then you don't have to read the record.

Mr. Robertson: Very well. I am very sorry I misunderstood your Honor, but I stated the law to your Honor, and your Honor said that the first proper procedure was to state the facts and then state the law, so I——

The Court: I don't remember stating anything of the kind.

Mr. Robertson: Well, I so understood your Honor. I take the position that even a tax forum, and that the law writers support that, that they can't come in according to his letter now and take these payments we made and say, "All right. We are going to take those payments and pay off all the personal property taxes, and you still owe us for the real property taxes which are involved in this suit." I submit that is not the law, and I also submit on the motion for judgment on the pleadings that we are entitled to a motion on the judgment on the pleadings under the Appellate Court's decision, in the previous similar case in which I was seeking to have your Honor enter up an order on the judgment on the mandate before I started my argument.

The Court: Well, now, as I understand it, your one point is that these tax payments have been misapplied, contrary to your instructions?

Mr. Robertson: That is right. They can't do it, misapply it. [20]

The Court: All right. Now, is there any other point?

Mr. Robertson: Yes. I just stated it. I am entitled to motion for a judgment just simply on the basis of the Appellate Court's decision reversing your Honor in the previous case known as the 1948 and 1949 Taxes.

The Court: Well, is this merely an application for judgment on the mandate in another form? Is that what it is?

Mr. Robertson: No. I say that I am entitled to the——

The Court: Then tell me why you are entitled to the judgment. That is what I want to hear.

Mr. Robertson: Because of the Appellate Court's opinion in the similar case where they tried to levy taxes and enforce taxes against these people for 1948 and 1949.

The Court: But was there a like misapplication there?

Mr. Robertson: That is what I submit; yes, your Honor.

The Court: I don't remember anything of that kind. I don't remember that there was ever a misapplication of tax payments.

Mr. Robertson: No. No; there wasn't a misapplication, but I have got two points here. One is that they are attempting to misapply the funds without authority, and the other is that anyhow they can't maintain this suit in view of the—— [21]

The Court: Of the lack of segregation?

Mr. Robertson: That is right; yes, your Honor.

The Court: You didn't say that. You mean there is still a lack of segregation?

Mr. Robertson: Yes, your Honor.

The Court: That is all I need to know then.

Mr. Robertson: Well, I can't tell how much your Honor needs to know.

The Court: Well, you just don't even make the point. I can't guess at it. This is the first time that I have heard of lack of segregation, and I have to suggest it.

Mr. Robertson: I can't make my argument all at one time.

Mr. Paul: May it please the Court, I can make my reply very brief. The Court may recall the previous decision of this Court in the 1948-1949 Delinquent Tax Roll, in which this Court relied so heavily upon, mainly, the inactivity that the taxpayers indulged in to an equal extent with the City. The Circuit Court of course wouldn't go for that reasoning, however cogent it was. However, the parties have just gone right ahead, that is to say, before they knew what the Circuit Court was going to say, have gone right ahead dealing in exactly the same manner in the case which is before the Court now.

Now, after the case is filed and before we hear from [22] the Court of Appeals is when the commingling was heard and the payments were made by Mr. Robertson for his client. The taxes paid were on real and personal property, for those checks that he named off, in response to the billing the City of Yakutat sent for taxes on real and personal property, commingled. We have got two categories of taxes. Actually, to separate them is merely a matter

of computation because each item of real or personal property is spelled out. For instance, in this tax roll here, as I recall, the personal property was spelled out on the delinquent tax roll—\$94,000.00. There is another item of land, which is real property.

Now, after we get this delinquent tax roll filed in this court, the Court of Appeals comes along and says, “You are both acting illegally,” so what we are doing is removing the category of personal property taxes from this proceeding. That is something in the nature of a supplemental action when an act has occurred——

The Court: Well, now, how are you removing the category of personal property from this proceeding?

Mr. Paul: We took all the money which was just generally given us for real and personal property and we applied it for the portion of the proceeding which should not be in the case, for which the City of Yakutat could not apply it—the Bellingham Canning Company on the delinquent tax roll, personal property. Now, we have that choice. Both sides [23] acted in an illegal manner, so one jumps in and tries to correct it. That is all we have done.

The Court: Well, what about his point about misapplication, at least the failure to follow the directions accompanying the remittance of the money?

Mr. Paul: In other words, the application was directed to real and personal——

The Court: He says that what you say you have done is a misapplication because it was a failure to comply with the directions accompanying the remittance. Now, what about that?

Mr. Paul: Well, his direction was to pay real and personal property taxes. He didn't send enough money, so we went ahead and——

The Court: Was it enough for the personal property taxes?

Mr. Paul: Yes. Yes, indeed. They are paid in full.

The Court: Then according to your method of procedure you have something left over to apply on real property taxes?

Mr. Paul: Yes. He didn't send enough money, because there was a dispute as to valuation of personal property and to valuation of real property, but the application was directed to be made to the personal and real property taxes according to the amount they think is the right amount. There was no [24] specific instruction for so much for personal and so much for real property, except in the sense that the categories are disputed in the amount of valuation. Our position now is that the personal property taxes, when we discovered the illegality of the activity of both sides, we applied them in the proper manner, not inconsistent with any instructions given us. The personal property taxes are all paid, and part of the real property too. Now, I don't mean to be conceding that we can take, that we can be required to apply the taxes in a certain manner. Where we have a subject so little con-

nected as the general tax program of a city, I don't think that a taxpayer can say, "Well, now it is true I owe several thousand dollars for a couple years ago on some personal property that has disappeared, and I am just going to pay my real property taxes for this year." You can't do that. When you owe taxes in general categories——

The Court: Well, suppose he disputes that there is a tax on this personal property that has disappeared, what about it then?

Mr. Paul: That is about like a case here I had the other day where I filed an appeal from the Industrial Board, and the defendant employer of course is required to pay, pay the award, unless he applies for relief from payment. He made no such application for relief. Instead he sends us a check, which in effect is going to make us dismiss our appeal. He [25] can't do that. If he tenders a check and he says only to take it, and we will get rid of a bona fide dispute, we take the check without any such provision. We disregard the provision. We get back to the old compromise——

The Court: Then you dispute his view of the law?

Mr. Paul: Yes, indeed. I want to make that clear. I do not agree with him on that compromise.

The Court: Well, then, as I understand it, your position is that by applying the money in this way that you have rendered the question of segregation or the objection of lack of segregation moot?

Mr. Paul: Yes. The fact that it has happened

since the application was filed is immaterial. It is simply facts; that is all.

Mr. Robertson: If the Court please, I can't permit to go unchallenged Mr. Paul's statement that the Appellate Court held my client did anything illegal at all. I think that is absurd and wrong, that the Appellate Court's decision held that the objectors have done any illegal act whatsoever. As a matter of fact, they not only found against his client, and they also taxed costs against it.

Just to show some of the inconsistencies here, your Honor, and since your Honor doesn't want me to read it, I would like to call your attention to Mr. Paul's sworn answers sometime in December of 1952 before the Clerk, Answer 58 in [26] which he said, "This means that Bellingham Canning Company has paid its personal property tax and total based upon a \$94,000 valuation and the balance of the tax claimed is attributed to the personalty."

The Court: Now, what is that in?

Mr. Robertson: His Answer 58, signed sometime in December, 1952.

The Court: But what is Answer 58 in, so I can locate it?

Mr. Robertson: In his answers to our interrogatories of November 21, 1952. It was signed by him sometime in December before the Clerk, in 1952. At that time they were taking the position they were going to apply the balance to personal taxes, according to this answer he gave me. And I submit there isn't any question of compromise in this case at all at the present time. If they didn't want to accept

the checks as we sent them, they should have returned the checks. They can't take them now and apply them to one particular thing that is not subject to this lien law and say that you still owe it for the real property taxes.

The Court: Well, now, what is your point in calling attention to Answer 58—to show that he is taking an inconsistent position now?

Mr. Robertson: Another inconsistent position now. His letter of September 8th, his affidavit of April 26th, and [27] this answer of December, 1952, are all inconsistent with each other.

The Court: Well, now, let's assume that they are inconsistent. Is he precluded from taking his present position?

Mr. Robertson: Yes; he is precluded, your Honor.

The Court: Why?

Mr. Robertson: Because the recipient has no right to apply those payments under the law except as directed by the debtor.

The Court: Well, I know that that is your point, but, if that is the point, there is no use of calling attention to his inconsistency because, if that is the law, he is bound by it regardless of inconsistency.

Mr. Robertson: Well, very well. I might say, your Honor——

The Court: Well, now, then, as I understand it, I will have to go into this question of segregation somewhat. I took the position previously, and I have never investigated it since, so I don't know whether my position is so unsound or not, but I

took the position at that time, and it certainly is the law, and it is the law now, that a person can waive anything, even a constitutional right, and that, when the taxpayer himself returned the property without segregation, made a return of real and personal property, that he waived the right to segregation, and I have never seen any reason for altering [28] my view, except this decision of the Court of Appeals, and I have never gone into the question but it just seems preposterous to me that a person couldn't waive the right to segregation of real and personal property.

Mr. Robertson: But we raised the point that we didn't waive it. We raised that very point.

The Court: Well, but wasn't there a return made of personal and real property without segregation? That is my recollection.

Mr. Robertson: Oh, no.

Mr. Paul: I got the impression from the Court of Appeals opinion that, in so far as attempting to collect personal property taxes by means of a lien foreclosure proceeding, to do away with it because it was in effect giving the court jurisdiction where it did not exist there before. But, as a matter of fact, I don't know why, none of the lawyers down there raised it, but in that 1948-1949 Yakutat Delinquent Tax Roll, which had gone down to San Francisco, it is perfectly possible to separate them, all those personal property items every one, of them, but apparently nobody raised the point.

The Court: I don't think you did here then either. I don't recall that you called attention to

the fact that the two species of property could be separated on the basis of the record.

Mr. Paul: It never came up. We never talked about [29] it at all.

The Court: Well, weren't you one of the attorneys on appeal?

Mr. Paul: Well, yes, but I didn't actually get down and do the oral argument or——

The Court: Well, but it seems to me a point like that would be made in the written brief.

Mr. Robertson: It was his brother Fred, and the case was not argued in San Francisco. That is immaterial. It was argued in Seattle, and his brother Fred in his brief, which counsel purports to—his brother Fred raised that very point, and that is why the Appellate Court come pretty near telling me off down there when they finally handed the decision down, but they finally said it was true—my contention. He is blaming his brother Fred. I was right there when his brother Fred was arguing very vociferously for that point.

The Court: Is there anything further to come before the Court?

The Clerk: Nothing today.

The Court: I will take this under advisement.

Mr. Robertson: I would like to ask, your Honor, that should your Honor overrule my motions that it would be a great accommodation to my people that the hearing not be held until May 10th. That is Monday. Mr. Paul has asked that it be set for May 7th. That would be a week from this coming Friday. [30]

Mr. Paul: The 10th is all right with me. The 7th, I just thought that——

Mr. Robertson: In case the Court should deny my motions and the hearing should be set—in fact, May 11th would still be better. I got a letter from Mrs. Welsh stating that she just couldn't possibly get here by May 7th.

The Clerk: What case are you talking about?

Mr. Robertson: The same suit. He has got a motion there for setting the case for hearing on May 7th.

The Court: That is on the presentation of the tax roll?

Mr. Robertson: Yes. If your Honor should overrule my motions.

The Court: Well, if the motions are denied, the case will be set for hearing May 10th at 10:00 a.m.

Thereafter on the 10th day of May, 1954, at 10:00 o'clock a.m., at Juneau, Alaska, the trial of the above-entitled cause came on for hearing before the Honorable George W. Folta, United States District Judge; the applicant appearing by William L. Paul, Jr., its attorney; the objectors appearing by R. E. Robertson, their attorney; the following proceedings were had:

Mr. Robertson: If the Court please, I would like to have Mrs. Welsh and Mr. Bristol sit inside the bar here. [31]

The Court: All right.

Mr. Paul: Does the Court have the official file here?

The Clerk: I thought the Court had it.

The Court: I think I returned it to you Saturday.

(The Clerk left the courtroom to obtain the file.)

Mr. Robertson: Has the Court made any official announcement in No. 6581?

The Court: About a week ago.

Mr. Robertson: Saturday?

The Court: I said about a week ago.

Mr. Robertson: I hadn't been informed of it. Your Honor told me about it personally Saturday morning in your room, but I didn't know—Mr. Lievers told me he hadn't received it.

The Court: Oh; I had in mind another case. That was decided Saturday morning. I don't know why the Clerk didn't notify you.

Mr. Robertson: The way that Mr. Paul sought to apply the costs in that case was overruled; was that it?

The Court: Yes. Well, I don't suppose we need the file here in order for counsel to outline their cases, do you?

Mr. Paul: May it please the Court, the testimony to be adduced by the applicant will be very, very simple. We will simply have the City Clerk identify the duplicate [32] delinquent tax rolls for the appropriate years which are attached to the application. The evidence will show that the taxes we claim due are not yet fully paid and on the

reality we are entitled to an order of sale. And that constitutes our case in chief.

The Court: I should think that you would be able to stipulate that the taxes haven't been paid. Can't it be stipulated?

Mr. Robertson: Well, we don't contend that we have paid any tax except as we alleged in our pleading, your Honor.

Mr. Paul: Well, then I don't think there is any dispute as to the amounts paid or valuations claimed by the objectors or the valuations claimed by the City. All those figures are simply in the record. With that we think we are entitled to an order.

If it comes to the point of receiving evidence from the objectors, we are going to object to the introduction of evidence on the ground that they have not exhausted their administrative remedy, in so far as Libby, McNeill & Libby and Yakutat & Southern Railway are concerned. They have made no appearance before the Board of Equalization. In the absence of that, it is our position that they cannot now come to court because they haven't complied with exhausting their administrative remedy.

In so far as Bellingham Canning Company is concerned, [33] the successor, we are going to object to the introduction of any evidence by them on the ground that there is no factor that they can be substantially injured. There is just a dispute in valuation. That is all it is. Unless they can show that there is some factor that we have overlooked, such as the Court discovered in the Chilkoot Case, why the findings were made by the Board of Equali-

zation, and this Court has nothing to do in the absence of any showing of a substantial injury. In other words, our position is that a dispute is simply a dispute and it does not constitute a substantial injury.

Incidentally, the Bellingham Canning Company did appear before the Board of Equalization. While the proceeding was informal, in so far as taking sworn testimony and things like that, still they did make an appearance and presented evidence. In that sense they went further than Libby did. Libby simply submitted claims wholly unsupported by evidence. Of course the Board has to take that into consideration because the Court has to consider evidence, not merely claims.

The Court: I don't understand what you mean by "claims."

Mr. Paul: They claim the property is worth less than what it was assessed at. It is a bare, naked claim—a dispute, you might call it—and Libby didn't give the Board anything to go upon to support their claim. Hence, I say, we are entitled to ignore the claim. They have got to present [34] evidence to help the Board.

The Court: Who is it that you say did not appear before the Equalization Board?

Mr. Paul: Libby, McNeill & Libby and Yakutat & Southern Railway did not appear; they did not present evidence; they merely presented a claim unsupported by any evidence. Bellingham Canning Company did appear.

Mr. Robertson: We contend, your Honor, that

this is a statutory proceedings and must be strictly construed, and it is incumbent upon the City to prove all the jurisdictional steps necessary to maintain this proceedings; that they will be unable to make that proof; and that necessarily they, therefore, cannot obtain an order for the sale of the objectors' property.

Furthermore, we contend your Honor, and we think it will clearly show, that the decision of the Appellate Court in the 1948 and 1949 Case is absolutely the rule of law that controls this particular proceedings, and that this proceedings necessarily must fall because it has the same defect as the 1948 and 1949 proceedings are concerned. We don't admit, to the contrary we contend, and we think the evidence will so show, that there was no assessment whatsoever of either of these objectors' property, any valid assessment, made in either the tax year 1951, or the tax year 1951; also that it will appear from the evidence not only that the Appellate Court's [35] rule is or decision governs this proceeding, but also, as a matter of fact, that that decision is *res adjudicata* of this proceeding. That will take evidence to disclose, but the other will stand apparent upon the record.

We also maintain that these valuations which the City has put or claims on the property are unjust valuations and that, regardless of whether or not for 1950 either Libby or the Yakutat & Southern Railway appeared before the Board, that the tax value of their property still must be based upon the law of actual value, so that they can't just come in because someone didn't come before the Board,

and on the contrary we protested it and tried to show them what the proper value was. They can't just put on any value they want on and maintain that value. Of course in 1950 both Mrs. Welsh and Mr. Bristol appeared before the Board on behalf of Bellingham Canning Company and the Yakutat & Southern Railway.

We also think, your Honor, that the records will show, or the evidence will show, rather, that the Board of Equalization and the Town Trustees did not follow their own ordinances, and that they are bound by the ordinances just like the public is until they amend it or change those ordinances. And in 1951, the evidence will show that the Board of Trustees made the valuation; there was no assessor; and that they didn't amend that ordinance. They did that right directly in violation of provision three of their own ordinance, [36] Section 3 of their own Ordinance No. 1, which was not amended until after that authorizing the Board to make it, and the fact that they set up a resolution or an ordinance establishing certain procedure, even though that under the law they can act as assessors themselves, but, if they create a procedure and appoint someone, then they are bound by that.

And we submit, your Honor, that the evidence go in, and the burden in the first place and duty is on the City to establish the jurisdictional steps, which is before this Court in this matter.

Mr. Paul: I am going to object to a good many points counsel makes, your Honor, but I suppose the best time to do it is when he offers the evidence.

The Court: What about his statement that the burden is on the City to establish jurisdictional steps?

Mr. Paul: Far from it; just the opposite.

The Court: Well, I just wanted to know whether you agreed with it. Now, that brings us down to the case itself. As I understand, there is no issue then here so far as your case is concerned. Am I correct in that?

Mr. Robertson: I don't get that.

The Court: I say, as I understand it, the facts constituting the plaintiff's case, or the City's case *prima facie* are not in dispute here.

Mr. Paul: In other words, does the application look [37] like a regular application for an order?

The Court: Yes.

Mr. Robertson: I challenge that right at the start, your Honor.

The Court: Well, but you challenge it on the ground that you feel that they have to show that each jurisdictional step has been taken.

Mr. Robertson: That is right.

The Court: Well, but I don't agree with that. So, with that ruling, now where does that leave us? Is it necessary now for the City to put on any evidence or shall we go on with your objections?

Mr. Robertson: I think they have got to get before this Court their delinquent tax roll in the first place.

The Court: Well, but that part of it may be agreed to. There is no use of doing something

superfluous here. Unless there is some real dispute, why, they may introduce their tax roll, and then, unless you have something to call attention to, it seems to me that there is nothing else that would——

Mr. Robertson: Let him offer it. I want to make my objection to it, your Honor. [38]

Applicant's Case

DOROTHY HENRY

called as a witness in behalf of the applicant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Paul:

Q. Your name is Dorothy Henry?

A. Yes, sir.

Q. And you are the present City Clerk of the City of Yakutat? A. Yes.

Q. You brought your records with you; have you? A. I have.

Q. This morning did you have an occasion to look over those records and see any document in there which appears to resemble this one? You can come down and look at it. A. It looks like it.

Q. Is this the duplicate delinquent tax roll of your city as appears from your records?

A. Will you please repeat that again?

Q. This document in the official file, does that appear to be a duplicate of what you find in your files? A. It appears to look the same.

(Testimony of Dorothy Henry.)

Mr. Paul: We will offer the duplicate delinquent tax roll in evidence, your Honor.

Mr. Robertson: I object to it, your Honor, as incompetent and irrelevant. The duplicate tax roll presented [39] in the application here is in the exact form of the duplicate tax roll before this Court and the Appellate Court in the previous case in this court, No. 6581-A, in which the Appellate Court held that it was invalid and said so, as your Honor knows——

The Court: Let me understand—that case involved the tax for what year?

Mr. Robertson: 1948 and 1949.

The Court: And this is for '50 and '51?

Mr. Robertson: 1950 and 1951, the two succeeding years. If your Honor will check with the printed record on Page 6 for the duplicate delinquent tax roll for 1948 and 1949, you will note that the form of this duplicate delinquent tax roll for 1950 and 1951 is prepared in the same, in exactly the same form as it was that year. The one in 1948 and 1949, as I said, was before your Honor and before the Appellate Court, and the Appellate Court said that “The difficulty, however, is that the amount of taxes, penalty and interest due upon the realty alone is not shown in the record. If the amount were separately stated in the delinquent tax roll filed by the city with its application for order of sale, it would be presumed that the realty was properly assessed and that the amount stated remains unpaid,” and for that reason the Appellate

(Testimony of Dorothy Henry.)

Court reversed your Honor and held that the proceedings were invalid, and I submit it is identically the same form in every [40] respect as the one for 1950 and 1951.

The Court: I don't recall that the decision went to anything like that. I thought the decision went to the fact that foreclosure was attempted under the lien provisions applicable to real property. I didn't know the Court decided anything as to the assessment roll itself.

Mr. Robertson: Well, I just read it to your Honor. Does your Honor challenge my——

The Court: But did the Court make any decision, or was it just a comment of the Court?

Mr. Robertson: Why, no. The Court went right along and knocked it out. It said: "But the taxes due upon the realty and personalty were 'lumped' and stated in a single amount. This is the same as no statement at all, since there is no basis for allocating any part of the amount stated to the realty. If the realty and personalty of appellants were ever separately assessed, as the statute requires, that fact does not appear in the record. Since there is nothing in the record to indicate, and no basis for a presumption that the realty was properly assessed, or, if properly assessed, that any specific amount of taxes thereon is unpaid, the City has made no case against appellants. No part of the order can stand."

The Court: Well, that is because of course of the nonapplicability of the lien provision. But,

(Testimony of Dorothy Henry.)

now, is this [41] assessment roll that we have before us here the same so far as these defects are concerned?

Mr. Robertson: Absolutely; the same form.

Mr. Paul; No; it is not the same form, your Honor.

The Court: I don't know how counsel can be disagreed on something as simple as that.

Mr. Paul: On Page 10 of the printed record that went to the Court of Appeals we find the duplicate delinquent tax roll that was used in the preceding case; just as counsel states, it does say in general terms "Tax Delinquent in 1948." That is the only description of any property. In other words, it is really no description at all in the sense of separating personalty and realty. Now, there was a similar document, as appears, and that is what I am offering here, used in another aspect of the 1948-1949 Case. But when it came down to Libby, McNeill & Libby we turned out a special one which did not split up the personalty and realty, and so in that sense, why, the Court of Appeals, trying to save this Court's decision for the City, ran into the difficulty of this special delinquent tax roll that we used for Libby which did not split up the personalty and realty. However, this one does split up the personalty and realty, and we have withdrawn the personalty from this action altogether. It appears in the printed record at Page 10 of that case.

The Court: You mean that you have withdrawn

(Testimony of Dorothy Henry.)

any [42] claim for personal property taxes from this case?

Mr. Paul: Yes. They gave us enough money and directed us to pay personal and real property taxes and, when we discovered that the proceeding was irregular in the sense of asking for an order of sale on personal property, we then applied all the money toward extinguishing the personal property taxes first, and then there was some left over for the real property taxes.

The Court: Well, but aside from that, if the money had not been so applied, what have you to say as to the point made by counsel here that the two assessment rolls are practically identical so far as the defects pointed out?

Mr. Paul: I think he is mistaken on the identify idea, your Honor. Plainly, the Court of Appeals was attempting to save this proceeding when it went into the discussion of how, if it were possible on the face of the record, to separate the personalty and realty, and they came to the conclusion that it wasn't possible because the record wouldn't permit it. It doesn't show how much is personalty and how much is realty. And so, I think it is perfectly proper for us here, if we can show on the record the impossibility of separating the personalty and realty, that we can proceed for the sale of the realty only. There would have been no purpose for the Court of Appeals to go into the discussion of what the record showed unless the Court was trying to find some [43] basis for saving the proceedings.

(Testimony of Dorothy Henry.)

The Court: Well, what is going to show the segregation here? What part of the record is going to show that?

Mr. Paul: The duplicate delinquent tax roll. Then, it says: "Land, \$11,000; Frame Buildings, \$176,000; Personal, \$94,000." Now, that, in the former case that wasn't done. As Page 10 of the record indicates, this was the style of the duplicate delinquent tax roll, which is entirely different than the one we are considering now.

The Court: Well, then, in what respect is it claimed on behalf of the objectors here that this particular roll is defective?

Mr. Robertson: Your Honor, I challenge counsel's statement. The delinquent tax roll in the previous case, 1948 and 1949, which was before the Court was headed "Delinquent Tax Rolls for 1948 and 1949."

The Court: Well, as I understand it, then your objection is based on the fact that, notwithstanding that in the first column there may be a reference to real and personal property, the tax, penalty and interest are not segregated as to the items in the first column?

Mr. Robertson: Your Honor, now I want to point out something else first. This is the delinquent tax roll which is now before the Court and which is in the same form, just made out in the same way. Now, I submit, when the Appellate [44] Court used the words "delinquent tax roll" in their decision, they were talking about the delinquent tax roll, and

(Testimony of Dorothy Henry.)

it said that "If the amount were separately stated in the delinquent tax roll." Now, what Mr. Paul has called to your Honor's attention on Page 9 and 10 of the printed record is simply the notice. It isn't the delinquent tax roll at all. It is a notice like he has got a notice at the top of this, and it is true that in there, in their notice, that he pointed out, but that is not their delinquent tax roll. The delinquent tax roll is just what I have just shown to your Honor, which was before the Appellate Court. I submit they are in exactly the same form.

The Court: Well, it seems that the roll doesn't conform to what the Court held it should be in so far as segregation is concerned, segregation of tax, penalty and interest.

Mr. Paul: Your Honor, when counsel refers to Page 6 that is the delinquent tax roll that he says is like the one we have before us now, but, when we look over that roll, we don't find Libby, McNeill & Libby and Yakutat & Southern Railway. In other words, we had two duplicate delinquent tax rolls. So, when he says these two rolls—the one I am offering in evidence now, and the one in the former case—being exactly the same style, that is true except when we get to Libby. Libby had a special one, which appears at Page 10. [45]

The Court: But I don't get the significance of that. Now, suppose that Libby's was different, then how does this change the situation?

Mr. Paul: Because it is impossible to segregate

(Testimony of Dorothy Henry.)

the Libby delinquent tax roll in so far as tax on realty and tax on personalty because there is no basis for computation on the Libby delinquent tax roll. Now, that is what the Court was looking for, some basis upon which a mere computation could be made, permitting an order of sale to exist on realty only. It just happens that that Libby one didn't split it up like the other rolls, and so there is no basis for computation in the record. Now, as I say, the discussion of the Court of Appeals is plainly directed to finding some basis to split it up, and thereafter it is only a matter of computation, so many mills times \$146,000 real property valuation. That is all it is.

The Court: Well, your position is that in so far as the record shows a segregation that the roll need not; is that it?

Mr. Paul: Need not. It is not a fatal defect, if the personalty and realty taxes and the interest are lumped, if there is some segregation at some time so that we can simply by a matter of computation make a new computation.

The Court: But how is that going to get into the record here? How is a necessary basis for this computation [46] going to get into the record?

Mr. Paul: Well, I am offering that basis for computation now. We will be eliminating the \$94,000 for personal property from this proceeding, and thereafter it will be so many mills times the assessed valuation of the real property. That is all.

(Testimony of Dorothy Henry.)

The Court: Well, it may be admitted subject to the objection.

Mr. Robertson: I also take the position, your Honor—I didn't quite get whether your Honor ruled on it or not—of course I take the position that the ruling that your Honor made in No. 6581-A also would necessarily apply, that they can't apply this \$719 figure for costs from the Appellate Court in No. 6581-A in this case. And, furthermore, that you can't apply any of the money paid for taxes contrary to the direction of the debtor, and it is admitted in this case that the debtor directed the application of this money as to what was done. He paid the taxes in full. He didn't say you could pay \$94,000 personal property taxes and, if there was anything left over, for real property. It was paid in one sum, and there is admissions in this record that they received those checks. They didn't return the checks to the payors.

The Court: Well, I understand your position, but I have got to get along with this case. It can't be in the argument stage here forever. The objection is overruled, and [47] the roll may be admitted.

Mr. Robertson: I can't see the necessity of going to tremendous expense in this case taking an appeal, and it seems to me right now this case, and in view of the Appellate Court's ruling, right now that case ought to be, this particular proceeding should be dismissed.

The Court: But what about his point, which

(Testimony of Dorothy Henry.)

seems to be sustained here by the record, that there is a segregation possible?

Mr. Robertson: He hasn't shown to your Honor how he could do it except by himself saying that of course he could have gone down to the Appellate Court and told the Appellate Court how to do it, write it up. He has got to have some law for it, not just the attorney on one side taking it up on one side.

The Court: It seems to me that the Appellate Court's opinion intimates that, if there was sufficient evidence in the record from which that computation could have been made, it would have been saved, so the roll may be admitted subject to the objection.

Mr. Robertson: Will it be marked as an exhibit?

The Clerk: It will be marked as Petitioner's Exhibit No. 1.

Mr. Robertson: That also goes to my objection that they have to prove the jurisdictional steps first, your Honor? [48]

The Court: Well, I have already ruled on that.

Q. (By Mr. Paul): Mrs. Henry, have you brought the assessment books with you?

A. I have.

Q. Does Mr. Robertson have them?

A. It is in that box that I brought.

Mr. Robertson: I haven't had a chance to look at them, Mr. Paul.

Q. (By Mr. Paul): Can you come down here,

(Testimony of Dorothy Henry.)

Mrs. Henry, and find Libby, McNeill & Libby, and Yakutat & Southern, and Bellingham?

A. For when?

Q. The tax year for 1950-1951. Didn't we mark it here? A. It is No. 5.

Q. Well, now, this is for Page No. 5.

Mr. Robertson: What year is that, Mr. Paul?

Q. (By Mr. Paul): This date here describes the tax year, does it? A. Yes.

Q. 1948-1949. Now, I see Libby, McNeill & Libby marked down as 1950-1951. In so far as you know, are these the official records of the City of Yakutat? A. In so far as I know.

Mr. Paul: I don't suppose we need to introduce the whole book, your Honor. I can simply read into the record [49] here—I propose to read these items——

Mr. Robertson: Well, I object to that, your Honor, and particularly until it is first established that there was an assessor appointed, that the assessor took the taxes, and that the assessor made the appraisements.

The Court: I don't even know what that record is, or what it purports to say.

Mr. Paul: This is the assessment book, your Honor, and I thought that I would read, in place of introducing the whole book, the segregation items and the millage rate applicable.

Mr. Robertson: Well, your Honor, it is also inconsistent with the delinquent tax roll which your Honor permitted in evidence subject to objection

(Testimony of Dorothy Henry.)

in that the only assessment in there is against the Bellingham Canning Company. There is none against Libby, McNeill & Libby at all.

The Court: Would it be inadmissible for that reason? I don't think so.

Mr. Robertson: Their own ordinance and also the statute says it must be assessed against the person who owns the property, and the Bellingham Canning Company didn't own a stick of property there in June 1, 1950.

The Court: That will have to be a matter of defense. Objection overruled.

Mr. Paul: Libby, McNeill & Libby, and Yakutat & [50] Southern Railway, Board Valuation, 1950-1951, Land, \$11,000; Improvements—

Q. (By Mr. Paul): Maybe you can read this better than I can, Mrs. Henry. The next item, Improvements, what is that figure?

A. It looks like \$176,125.

Q. And the next item? A. \$94,000.

Q. Well— A. Personal, \$94,000.

Mr. Paul: 16 mills. February 2, 1951, Payment, \$2,484.80. Libby, McNeill & Libby, and Yakutat & Southern Railway, 1951, Board Valuation—that is the same as the year before. 16 mills. December 7, 1951, Payment, \$2,866.35. That is all that appears.

Mr. Robertson: It seems to me if—is that part of a page that you are reading from, or what?

Mr. Paul: What is in the payment column. That is all I read.

Mr. Robertson: Well, I object to the whole

(Testimony of Dorothy Henry.)

thing. I can't see how you yourself have interpolated. I will submit probably it does—but Libby, McNeill & Libby, the words are read ahead of the year 1949 and not ahead of 1950 or 1951, except that all of them are that way.

Mr. Paul: Yes. I have interpolated twice, [51] as a matter of fact, where there was a blank space. My interpolation was plainly the description of what should be in the blank space.

Mr. Robertson: Well, that is his conclusion, but I think the whole thing ought to go in. The record doesn't show it officially, I submit. It isn't our fault if they don't keep their records correctly.

Q. (By Mr. Paul): That is all that appears on Libby, McNeill & Libby here?

A. In that book?

The Court: Well, if there is a dispute as to what that shows, I think you better introduce it, that particular sheet, that page; that is, you may introduce the book limited to that particular sheet or page only.

Mr. Paul: Yes. Then we might have Winter & Pond make a photostatic copy so the book can be released; is that satisfactory?

Mr. Robertson: Very well.

Mr. Paul: Very well. I will offer it in evidence.

The Clerk: Petitioner's Exhibit No. 2.

CITY OF YAKUTAT
TAX AND ASSESSMENT ROLL 1905

190

1948	Owner's	Valuation	Tax	Date	Payment
		Assessor's	Rate		
Land	11000.00				
Improvements	5000.00			Dec 11 1904	16.31
Personal	2000.00			Mar 14 1905	55.56
TOTAL			3.263 3/4		
OWNER	Libby McNeil Lilly & Co. Yakutat Alaska				
1949					
Land	11000.00		13 mills	Dec 12 1949	175.18
Improvements	17000.00				
Personal	7400.00				
TOTAL			\$ 3,755.00		
OWNER	ADDRESS				
1950 - 51			16 mill	2/2/51	2484.80
Land		11,000.00			
Improvements		15,000.00			
Personal		8400.00			
TOTAL		34,400.00	4498.00		
OWNER	ADDRESS				
1951			16 mills		
Land		11,000.00			
Improvements		17,000.00			
Personal		9400.00		12/7/51	2866.35
TOTAL		37,400.00	4506.00		
OWNER	ADDRESS				

EXHIBIT NO. 2
RECEIVED IN EVIDENCE
MAX 10 1954
Clerk
Incl. 10 1954

Yakutat



(Testimony of Dorothy Henry.)

The Court: Now, you are offering that for what page?

Mr. Paul: Page 5.

Q. (By Mr. Paul): Now, Mrs. Henry, can you explain this other book here?

A. This one is for Bellingham Canning Company, and for [52] Yakutat & Southern Railway. The land——

Mr. Paul: Perhaps counsel would like to see the entire page.

A. This whole page is for Bellingham Canning Company and Yakutat & Southern Railway.

Mr. Robertson: What is it? What do you call that page? A. Roll No. 4.

Mr. Robertson: I don't understand this. Is this for the tax years 1952 and 1953?

A. '52-'53, '53-'54.

Mr. Robertson: What is the purpose?

Mr. Paul: I don't see now that there is any purpose at all.

Mr. Robertson: You mean it is subsequent to this controversy, for two subsequent tax years?

Mr. Paul: Yes. We won't offer this. You can resume your chair (addressing the witness). I think we can stipulate as to the time when Bellingham Canning Company bought the cannery, can't we?

Mr. Robertson: Yes.

Mr. Paul: When was it; May, 1951?

Mr. Robertson: May 5, 1951.

Q. (By Mr. Paul): Is that why the name Bel-

(Testimony of Dorothy Henry.)

lingham Canning Company appears on the delinquent tax roll? [53]

Mr. Robertson: That is, of her own knowledge.

Q. (By Mr. Paul): Well, do you know why the assessment book mentions Libby, McNeill & Libby and Yakutat & Southern Railway and yet Bellingham Canning Company is the one on the delinquent tax roll that is in court here?

A. Well, I wasn't Clerk at the time, but I can answer it to the best of my ability.

Q. Go ahead.

A. At the time the City was incorporated I believe it was Libby, McNeill & Libby, and then shortly afterwards it became Bellingham Canning Company. Now, I was not in Yakutat at the time.

Q. So, on this particular page that we have introduced in evidence here, Plaintiff's Exhibit No. 1, the same property was simply carried on——

A. That is it.

Q. ——oh——Plaintiff's Exhibit No. 2.

Mr. Paul: That is all.

Cross-Examination

By Mr. Robertson:

Q. Mrs. Henry, did you bring, in response to my subpoena duces tecum did you bring the official minutes of the Board of Trustees and the Board of Equalization?

A. Yes; I have them there. [54]

Q. I want to check with a copy I made.

(Testimony of Dorothy Henry.)

A. Any particular item?

A. I want to check a minute. How long have you been in custody of this official minute book, Mrs. Henry? A. June 1, 1953.

Q. During that time have you or to your knowledge has anyone made any changes or alterations in this book or in its minutes for the period commencing with the first entry on October 2, 1948, page 50, and the entries on page 204 of the book?

A. As far as I know, no one has made any entries.

Q. When did you say you took over?

A. June 1, 1953.

Q. Since June 1st? A. Yes.

Q. Since June 1, 1953, have there been any minutes entered in this book that in anywise directed or attempted to direct the application of the payments that Libby, McNeill & Libby made on behalf of themselves?

Mr. Paul: Your Honor, I will object to that. That is entirely a matter of proceeding in court, and I have made the commitment, and it is binding. Whether the City actually goes through the formality of adopting a resolution, I think it is wholly immaterial.

The Court: I don't think I got the purport of the [55] question.

Mr. Paul: He is looking for a resolution which, you might say, is to this effect, that of the, say, \$2,400 received from Libby, McNeill & Libby or Bellingham, since the receipt it has been directed

(Testimony of Dorothy Henry.)

to be paid to extinguish the personal property taxes. That is what he is looking for, and I can tell him right now he isn't going to find it because the choice is made as a matter of court procedure. I have done it.

The Court: Then there is no use of looking for it if it isn't there, I presume.

Mr. Robertson: Is that true, Mr. Paul, both for the payment made for the use of 1950 taxes by Libby on behalf of itself and Yakutat and that the Bellingham Canning Company paid for 1951 on behalf of itself and Yakutat?

Mr. Paul: Yes; that is correct. There has been no formal resolution.

Mr. Robertson: And would you also agree that no such resolution or ordinance had been enacted prior to that time?

Mr. Paul: Yes.

Mr. Robertson: Sometime ago, about a year ago last fall, Mr. Paul got this book down for me, your Honor, and at that time I had a copy made of all of the minutes of it, from the page 50 up to and including the then last page, page 204, and I have a copy of those minutes, typewritten copy, which [56] I wonder if you would agree it could be put in evidence?

Mr. Paul: I agree.

Mr. Robertson: They are not certified by anyone except before a notary public, one of my secretaries.

(Testimony of Dorothy Henry.)

The Court: If he agrees, if he has no objection to it, it wouldn't make any difference.

Mr. Paul: I think counsel gave me one once and I looked it over.

Mr. Robertson: Yes, I think I did.

Mr. Paul: I want to preserve the point, however, that—as I recall, those excerpts were directed to show lack of appointment of an assessor, lack of qualification of an assessor that was appointed, show the receipt of a letter of claim by Libby, McNeill & Libby—I am going to preserve my point that I think that those actions do not violate any substantial right of the taxpayer, because, first, the board acted as its own assessor, which they can do; they don't have to have someone specially appointed; and, secondly, in so far as the receipt of the money upon condition, that is the old compromise idea and is not binding on the city at all.

The Court: You object then to the—to what?

Mr. Paul: To the excerpts; and they aren't going to go to prove anything in the case. I admit that they are true copies.

The Court: Well, but it seems to me that, if you [57] agree, for instance, that a tax assessor was or was not appointed, that is all you need; then you don't have to have any documentary evidence of that if you can stipulate.

Mr. Robertson: I didn't hear that.

The Court: I say, if you can agree on whether an assessor was or was not appointed, then it is not necessary to introduce any records of this kind.

(Testimony of Dorothy Henry.)

Mr. Robertson: I didn't know Mr. Paul would so agree. Will you agree that these minutes show that there was no assessor appointed for the tax year commencing June 1, 1951, that the board itself acted, although Ordinance No. 1 at that time had not been amended for the City of Yakutat, also that the same tax assessment for the tax year 1950 was simply adopted for the same tax year, the same tax valuation for the tax year 1949 was adopted pro forma for the tax year commencing June 1, 1950, and that there was no assessor appointed, at least until after the council had acted, when Mr. Williams was apparently appointed sometime late that fall.

Mr. Paul: Yes, we so stipulate, your Honor. The board acted as its own assessor.

Mr. Robertson: Both years?

Mr. Paul: Both years.

The Court: 1950 and 1951?

Mr. Paul: Yes.

The Court: The years involved here? [58]

Mr. Paul: Yes; the years involved here. That is what is reflected on Plaintiff's Exhibit No. 2.

Mr. Robertson: And that they simply used the same tax valuation for the tax year June 1, 1950, as they had used for the tax year June 1, 1949?

Mr. Paul: It was carried on, yes; the identical figures. Well, no; just a moment. Oh, '48. No; it was fixed at \$281,000 in 1949, and that was carried over in '50 and 51.

Mr. Robertson: Now, Mr. Paul, will you stipu-

(Testimony of Dorothy Henry.)

late—it is true, as the Court has ruled, that these points are not jurisdictional, but I would like to present evidence or at least make an offer of evidence, and it will be easiest and quickest if Mr. Paul will agree to it; I don't know whether he will or not; but there was—that the Board of Trustees of the City of Yakutat did not officially or by any recorded records of official action designate the assessor or any other official of the city to post any notice for the presentation of this particular delinquent tax roll to this Court?

Mr. Paul: Your stipulation goes to a special appointment, appointment by a special document?

Mr. Robertson: That there is no official record in your minute book of any such designation by the Board of Trustees or anyone to post, or any notice of presentation of this delinquent tax roll.

Mr. Paul: The only official record will be that item [59] which shows the adoption of Ordinance No. 1.

Mr. Robertson: What?

Mr. Paul: The only item appearing in the minute book will be the record showing the filing and approval of Ordinance No. 1, in so far as appointing anyone to post a notice.

The Court: Well, you mean there is a general provision in that ordinance?

Mr. Paul: Yes; authorizing the clerk.

Mr. Robertson: Well, Mr. Paul, this book does not, if my memory serves me right, does not show the adoption of Ordinance No. 1; but will you stipu-

(Testimony of Dorothy Henry.)

late with me that true and correct copies of Ordinance No. 1 and No. 2 are in the printed record in the former case?

Mr. Paul: Yes.

Mr. Robertson: You agree now that is the only official action of designation of any assessor or anybody else to give notice of presentation of your Exhibit 1 to this Court?

Mr. Paul: Yes; in so far as these two tax years are concerned.

Mr. Robertson: In so far as what?

Mr. Paul: In so far as the present proceeding, the two tax years.

Mr. Robertson: And that you did not publish in any daily or weekly newspaper in the City of Juneau, Alaska, or elsewhere, as required by Section 10 of the City's Ordinance [60] No. 1, a notice that the Board of Trustees had fixed the rate of tax levy for either the tax years 1950 or 1951, designating the number of mills fixed on each dollar of assessed value of the property assessed, and that the taxes were then due and would be delinquent on or before the 15th day of September of either of said tax years 1950 or 1951.

Mr. Paul: That is right.

The Court: Now, you are reading from one of your objections, I presume.

Mr. Robertson: Yes, your Honor.

The Court: Just give me the number of that.

Mr. Robertson: I first read from my Objection No. 1.

(Testimony of Dorothy Henry.)

The Court: I mean this last one.

Mr. Robertson: This is Objection No. 2, your Honor. And the third is that there is no official action indicated in the record book or minute book of any kind of the Board of Trustees designating the place where or the date when this delinquent tax roll, Exhibit 1, should be presented to this Court.

Mr. Paul: Right.

Mr. Robertson: That is No. 3, your Honor. No. 4, that the City's Board of Trustees did not in any manner direct the time when said delinquent tax roll should be made up; no official tax record of that.

Mr. Paul: No. That is right. [61]

Mr. Robertson: Will you further stipulate to Objection No. 9 that neither the City's clerk nor any of its officers within ten days after posting of said notice, or at all, mailed to the Bellingham Canning Company, to whom the real property by said delinquent tax roll purportedly is assessed and whose last known and present address is and was known to said clerk and City to be Yakutat, Alaska, or to either Yakutat & Southern Railway or Libby, McNeill & Libby, although both of their last known and present addresses are and were well known to said clerk and City, or otherwise, notwithstanding neither City nor any of its officers published any notice in any newspaper whatsoever? Now, would you agree to that?

(Testimony of Dorothy Henry.)

Mr. Paul: Well, your idea is that within ten days after the posting of the notice we did not mail a notice to Bellingham?

Mr. Robertson: That is right; or, if you did publish it in some other newspaper of which we have no knowledge, and it is now admitted you haven't, you didn't mail any.

Mr. Paul: The only notification we gave was the posting of the notice, one of which was on this property involved here.

Mr. Robertson: That is the only notice you gave.

Mr. Paul: That is the only notice.

The Court: Well, then, am I to understand that Objection No. 9 has been admitted? [62]

Mr. Paul: Well, your Honor, one of the notices themselves was right on this piece of property which is the subject of taxation here.

The Court: Well, then, you better restate the qualification of this objection, that the only notice was given—what?

Mr. Paul: By posting notices, one of which was on the property here involved. In other words, there was no personal delivery, except that the notice was on the property. There was no mailing, and there was no publication in a newspaper.

The Court: But, as I understand it, there was the posting of notice on one of the properties, is that what you said, or the properties of one of the parties?

Mr. Paul: One of the notices on the property about which we are involved here.

(Testimony of Dorothy Henry.)

Mr. Robertson: Pardon me just a moment.

Mr. Paul: Did you bring the ordinance book?

Mrs. Henry: No. It is over in the hotel. I didn't think you wanted it.

Mr. Robertson: In May, 1953, Edward G. Johnson in his sworn amended answers to Objectors' Interrogatories said in answer to Question 56—"Identify each building that is included in or intended to be covered by the words 'frame buildings \$176,625.00' in said item mentioned in Interrogatory No. [63] 54." Answer: "The item 'frame buildings, \$176,625' are those buildings appearing on the land now owned by Bellingham Canning Company. The same segregation was made as appears in the evidence in that certain cause entitled "In re Yakutat Delinquent Tax Roll for 1948-1949." I offer that in evidence.

Mr. Paul: O.K. No objection.

Mr. Robertson: That is Mr. Johnson's amended sworn answer, your Honor, under date of May 8, 1953, to Objectors' Interrogatories of November 21, 1952.

The Court: It will be admitted.

Mr. Robertson: Now, as I understand, at the outset here counsel agreed, or else I misunderstood him, that we would testify for the tax year commencing June 1, 1950, the actual, fair, cash value of Libby, McNeill & Libby's property was \$49,100 and of the Yakutat & Southern Railway was on that date \$106,200.

(Testimony of Dorothy Henry.)

Mr. Paul: Do you say, will I stipulate that we will testify to that?

Mr. Robertson: Yes. Is that what you said you would stipulate to, or not? I thought when you started out and the Judge asked you about it—if you won't——

Mr. Paul: Oh, yes. I wasn't getting at exactly that idea, but I will stipulate that is what they claim and that they claimed that when they appeared before the Board of Equalization. [64]

The Court: Is that embodied in one of your objections?

Mr. Robertson: Yes, your Honor.

The Court: What number is that?

Mr. Paul: The defense that I stated originally when we began this hearing this morning was that that amount was not supported by any evidence before the Board of Equalization and that a mere claim is not enough to exhaust the administrative remedies. That was what I started out by saying this morning. But I will stipulate that they made that claim.

Mr. Robertson: Well, we will offer evidence of it.

The Court: Well, you don't have to if he is willing to stipulate it.

Mr. Robertson: He is willing to stipulate we make that claim. I will offer evidence to that effect.

The Court: To the effect that you made such a claim?

Mr. Robertson: I was going to put witnesses on

(Testimony of Dorothy Henry.)

to testify to these values, but the Court said to start out with he was trying to shorten this, and I was wondering whether or not he would admit that, if I called witnesses, they would testify to these values. That is what I was trying to get at.

The Court: Well, I think this stipulation is about enough to cover that, isn't it? The stipulation that the claim was made that the value was so and so seems broad enough to include the testifying thereto of witnesses. But, now, that is embodied in Objection—— [65]

Mr. Robertson: That is embodied in Objection 10, your Honor, showing the value of railroad property for each of those two years, real property, which includes land and buildings, was \$99,000, and its personal property for each of those two years was \$7,200, and that Libby's personal property for 1950 was \$49,100 and Bellingham Canning Company's for 1951 was \$76,603. I don't presume a stipulation is necessary to this because they have already answered the Objectors' Request for Admissions under Rule 36. They have answered affirmatively to Request 22, 23, 24 and 25 and 26, which is where I set out the letters where we paid the checks on those two years, your Honor, and also where they accepted the checks, I mean, taken the checks and cashed them and never made any refund of any amount of it. So, I will offer those in evidence.

Mr. Paul: No objection.

The Court: They are received in evidence.

(Testimony of Dorothy Henry.)

Mr. Robertson: As I understand, Mr. Paul, since we agreed, stipulated, that the Bellingham Canning Company bought out Libby, McNeill & Libby on May 5, 1951, that it might be possibly from that inferred, implied—we definitely stipulated on June 1, 1950, the Bellingham Canning Company did not own any of the real property for the tax year 1950—they didn't acquire any ownership of any of it until May 5, 1951.

Mr. Paul: Yes; that is right.

The Court: Well, you better restate that. [66]

Mr. Robertson: Well, I asked counsel to stipulate that on June 1, 1950, the objector Bellingham Canning Company owned no personal or real property situated within the city limits of the City of Yakutat and that its interest in this property was not acquired until May 5, 1951, when it purchased Libby's interest therein.

Mr. Paul: Right. Yes.

Mr. Robertson: Will you also stipulate that the Bellingham Canning Company at the time of purchase on May 5, 1951, paid \$120,000 to Libby, McNeill & Libby for all of the physical assets within the City of Yakutat, such as land, buildings, stock, equipment, or machinery, equipment and things of that kind, from which, upon which was given a credit of \$20,000 as covering the purchase price of railroad trackage and other properties outside of the city limits and that in addition the Bellingham Canning Company paid Libby \$80,000 for inventory of stock, like merchandise and stores on hand.

(Testimony of Dorothy Henry.)

Mr. Paul: I so stipulate. Of course now we are getting into counsel's case.

The Court: I don't understand what that credit of twenty thousand was given for.

Mr. Robertson: That was put in a negative way, but the \$20,000 covered the property outside of the town, railroad tracks and things of that kind, your Honor. In other words, they actually paid one hundred and eighty thousand for what [67] was in the town, which also included the Libby stock in Yakutat & Southern Railway.

Mr. Paul: Is counsel through with the witness?

Mr. Robertson: Well, I rather think I am, your Honor, but I called her down here, and, as I go through here, I am trying to get this all in here and get this case closed up, your Honor. May I call her back, if necessary, after she steps down?

The Court: It seems to me what is going on now appears to be in support of the defense, which ordinarily wouldn't be put in until after the City rested.

Mr. Robertson: Well, we got started off on this in this manner, your Honor. I agree with you. I had anticipated I would have to call Mrs. Henry to prove some of these things.

The Court: It is all right if he is through with his case.

Mr. Robertson: I brought her down with these records, but any time anything occurred to me Mr.

(Testimony of Dorothy Henry.)

Paul seemed willing to stipulate, so I haven't asked very many questions.

The Court: It doesn't make much difference; except, are you going to rest with this witness?

Mr. Paul: I have just one or two more questions.

Redirect Examination

By Mr. Paul:

Q. Mrs. Henry, the ordinance book, you stated, is down at [68] your hotel room?

A. Right now.

Q. Do you know whether the City has adopted an ordinance with respect to posting the delinquent tax roll in place of advertising it in a newspaper?

Mr. Robertson: I think the ordinance is the best evidence, your Honor.

Mr. Paul: First, is there such an ordinance; then I will ask her to produce it.

A. I would rather not answer that question because I don't know fully all the ordinances.

Q. Well, you look over the ordinance book and see if there is anything like it and then bring it up here, will you please?

A. Do you want it right now: I can get it right now.

Q. I guess after lunch would be all right.

Mr. Paul: That is all. The applicant rests. You may step down now.

Mr. Robertson: Well, this is before the Court itself, but on my motion, your Honor, based upon

those various statements heretofore that the application be dismissed, your Honor, they have proved none of the necessary jurisdictional action required before it could be presented to the Court, that it is *res adjudicata* under the decisions of the Appellate Court in the 1948 and 1949 tax appeal case, and also that that case is [69] also the rule of law governing this case as to the delinquent tax roll.

The Court: Well, the ruling is the same, or, I mean, the ruling will be reserved on it.

Mr. Robertson: I think that is our case, your Honor. Since Mr. Paul is going to call Mrs. Henry back at 2:00 o'clock and since I have been trying to go pretty fast here, I wonder if I could just reserve my conclusion, as to whether I am through, until 2:00 o'clock and have time during the lunch hour to think it over.

The Court: Very well.

Mr. Paul: All Mrs. Henry will do is produce that ordinance if there is one.

The Court: Very well.

Mr. Robertson: I guess I will have to call probably both Mrs. Welsh and Mr. Bristol, your Honor, at least as to appearing before the Board of Equalization in the fall of 1951 and presenting their valuations at that time and that nobody asked them to be sworn or anything else. They were there and appeared personally and gave those statements.

The Court: Well, isn't that already covered by the stipulation?

Mr. Paul: We admit they appeared before the Board and they presented such evidence as they

wanted. It is true it was quite informal, but it looks all right to me. My [70] objection to that line of evidence is that there is no showing of an invasion of a substantial right that this Court can consider. That is the only jurisdiction this Court has to consider. It has got to be some special act that has been overlooked by the Board, as in the Chilkoot Case. Counsel has not yet met the issue.

The Court: That is a matter of argument.

Mr. Robertson: Then I think we are through, your Honor, but I would like to have until 2:00 to think it over, but I don't think there will be anything further as far as we are concerned.

The Court: Very well. Court is recessed until 2:00 o'clock.

Whereupon Court recessed until 2:00 o'clock p.m., reconvening as per recess, with all parties present as heretofore, and the trial proceeded as follows:

Mr. Robertson: I will take only a few minutes. Mr. Paul stipulated this morning that Mrs. Welsh and Mr. Bristol both appeared before the Board of Equalization and testified, and what I would like to also get in that stipulation, if he is agreeable to it, that none of the Board of Trustees or Board of Equalization or anyone asked them to be sworn under oath. There was no question that they were perfectly willing to have given that testimony under oath if they had been asked to. [71]

Mr. Paul: That is right. We will so stipulate.

Mr. Robertson: And that the cannery was not operated after the end of the 1948 salmon fishing season until in 1951 after Mrs. Welsh and her in-

terests had taken over the plant. In other words, it was not operating in 1949 or 1950. That was testified to, and I have got evidence also of that.

Mr. Paul: That is true, and also I think that, although counsel is going to use evidence in this other case, we should include in that that Libby intended to operate in 1950 but did not actually complete its intention of operating. I think that is in the evidence.

Mr. Robertson: I couldn't agree with that. That isn't in the testimony. They didn't have any plans to operate in 1950. They had some deal on for a while with Whizz Fish Company which was going to do something of that kind.

The Court: Is it material anyhow?

Mr. Paul: Oh, I don't think so, your Honor.

Mr. Robertson: Then, I would like to offer and get definitely in evidence, your Honor, Mr. Edward G. Johnson's Answers 1, 2, 3 and 4 to the—it is his Amended Answers of May 8, 1953, to Objectors' Interrogatories of November 21, 1952, and also his answers to—amended answer to Interrogatory No. 31, the same date—of course it was the answers—and also to Mr. Paul's—Mr. Paul, himself, personally made the first answers, and also Mr. Paul's Answers 31 and 33 to the [72] Interrogatories. Mr. Paul also personally on behalf of the City made the Answers to the Requests for Admissions, and I would like to put into that the Answers and Requests 1, 2 and 3. And I think Mr. Paul will admit this—it is in some of these answers to questions—that ordinance, that Ordinance No. 1 was in effect

throughout the tax years 1950 and 1951 and was not amended until sometime in the year 1952.

Mr. Paul: Yes, that was true, except, in so far as the posting provisions were concerned, it isn't mandatory for it to take advantage of the statute, to permit posting in certain cities where there are no newspapers, and that ordinance had been adopted prior to the time of the posting of the notice in this case.

Mr. Robertson: Could you point me out that ordinance? Your answer said it hadn't been amended, one of these answers, and I was relying on that.

Mr. Paul: Probably I had reference to the time when taxes were due to be paid. There has been a recent amendment on that. I am looking through the ordinance book now, but I don't find the official copy.

Mr. Robertson: I made this request, your Honor, for admissions, "Applicant's Ordinance No. 1 was in effect throughout tax years 1950 and 1951." That was Request for Admissions No. 21, and Mr. Paul, who made the answers on behalf of the City, answered that with the simple answer, "Yes." So, [73] I would like to offer that in evidence, your Honor.

The Court: Well, is that one of the responses that you referred to as 1, 2 and 3 a short time ago?

Mr. Robertson: No, your Honor. This is Mr. Paul's Answer No. 21 to my Request for Admissions of November 21, 1952. His Answers to Requests were made on December 22, 1952.

The Court: Then am I to understand that the

previous stipulation, the stipulation as to the preceding item, is to be expanded to include the fact that there was an ordinance adopted permitting the publication to be made by posting?

Mr. Paul: Apparently counsel doesn't agree on that point, so I omitted to have the former mayor testify as to its adoption and furnish him a copy.

Mr. Robertson: I am relying on Mr. Paul's answer.

The Court: If you have got the ordinances here, there shouldn't be any dispute over it.

Mr. Paul: No. I have to dig it out of my personal files and have the ex-mayor identify it as being approved. It is not final authority.

Mr. Robertson: I would like to have counsel's Answer 21 to my question then put in evidence. This is 21 in the Request for Admissions.

The Court: Maybe you better call your witness in rebuttal then.

Mr. Paul: Yes, indeed. [74]

Mr. Robertson: And in connection, your Honor—well, I suppose that is a question of argument. I think that is all, your Honor.

Mr. Paul: You mean you are resting, counsel?

Mr. Robertson: Yes.

J. B. MALLOTT

called as a witness on behalf of the applicant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Paul:

Q. Your name is J. B. Mallott?

A. Yes, sir.

Q. And you were formerly mayor of the City of Yakutat? A. I was.

Q. Do you ever recall any occasion when the Board of Trustees considered or adopted an ordinance to provide for the posting of notice of delinquent tax roll in lieu of publication in a newspaper?

A. Yes. I recall that I brought it to your attention that it was an expensive deal of publishing all of this in a newspaper when very few up there took the newspaper, and you drew up an ordinance which I presented to the council, and to the best of my memory it was passed.

Q. Do you recall the date? A. No. [75]

Q. Do you recall whether it was before or after August 9, 1952?

A. It was shortly after the last case in court.

Mr. Robertson: What was your answer?

A. I say it was after the last case, when all the publication and trouble, when it was brought up, the 1948-1949 case.

Mr. Paul: That is all.

Mr. Robertson: Well, your Honor, I don't think that is the best evidence in view of counsel's state-

ment that there were none, and I submit, your Honor, that the minute book, which was produced here, that is the best evidence that there is no such thing entered. In one of these answers they testified that that is the official record. I submit that is the best evidence.

Mr. Paul: I don't think that has been the ruling of the Court.

The Court: Would the ordinances be in the minute book?

Mr. Robertson: One of these witnesses, the City Clerk, said they were supposed to be complete.

Mr. Paul: There is a separate book, but we have examined it, your Honor, but we don't find several of the ordinances.

The Court: I don't think I can sustain an objection made on the fact that the ordinance isn't in a certain book. [76]

Mr. Robertson: No; but the further testimony, your Honor, his testimony is not the best evidence of an order. He doesn't know the date. I have counsel's statement, dated December 22, 1952.

The Court: It may be that it isn't the best evidence, but you didn't object to the question.

Mr. Robertson: I tried to object to it as soon as I could hear what the question was, with all these jets flying around here.

The Court: Your objection came after he had answered.

Mr. Paul: I take the position that our response to the question—was Ordinance No. 1 in existence for all this period—doesn't have anything to do

with a minor amendment made shortly before this notice with which we are concerned.

The Court: But that isn't the basis of his objection. There is no party precluded from introducing two items of evidence, one which happens to contradict the other or is inconsistent with it. That happens in nearly every case. Do counsel wish to argue the case or submit briefs?

Mr. Robertson: I would rather submit a brief, your Honor, if we could have a little time. I have one or two cases here I would like to cite, your Honor.

The Court: I think I would prefer briefs myself.

Mr. Paul: I can have mine in ten days, your Honor.

The Court: Very well. Ten days to each side, with [77] five days for a reply, if a reply is deemed necessary.

Mr. Robertson: Very well.

Thereafter on the 24th day of June, 1954, court having convened at 9:50 o'clock a.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; the applicant appearing by William L. Paul, Jr., its attorney; the objectors appearing by R. E. Robertson, their attorney; the following proceedings were had:

Mr. Robertson: If the Court please, in No. 6734-A, Mr. Paul served on me a few days ago some proposed findings of fact, conclusions of law, and cost bill, and I have prepared and I am submitting, your Honor, some written objections to them. I

will give Mr. Paul a copy of them. I don't know whether the Court would like to look them over or not. I don't——

The Court: Well, I suppose we ought to fix the time for hearing the objections.

Mr. Robertson: Well, I don't care particularly about making any extended argument on it, your Honor. I tried to set them out in detail, and there is some of the matters in these objections, and I don't think they have ever previously been called to your Honor's attention, but of course there wasn't time to submit them to your Honor. Now, if Mr. Paul wants time to hear my objections, that is agreeable with me.

Mr. Paul: Your Honor, as I glance over them I see [78] that they largely represent the continuity of the objections that counsel has heretofore made. I will confess there is one objection, however, and that is this business about the extra hundred dollars that appears in Objection No. 7. The figure of \$785.14 requested as an attorney's fee was based upon Rule 45 for contested liens. The extra hundred dollars, there was no authority for, as I look it over, and I am willing to retreat from that.

The Court: Then, am I to understand that the parties don't care to argue the objections?

Mr. Paul: I think in the main the Court has already decided them, your Honor.

Mr. Robertson: I don't think that is correct, your Honor, as to my Objections 4, 5, 6, 7 and 8, and I don't want Mr. Paul to have a misunderstanding about it, because in one of those I raised

the point that the City's tax ordinances don't fix any rate of interest to be allowed on delinquent taxes or the penalties, nor do the statutes themselves authorize a municipality to allow any interest upon penalty. If the ordinance provided for an interest within the limits of the law, I agree that interest could be charged upon the principal sum, but the ordinance itself, Ordinance No. 1, which is before this Court in this case, and neither Ordinances 1, 2 or 4, of which I asked the Court to take judicial notice, which are now in the Clerk's Office, provide for any interest to be paid upon [79] delinquent taxes or penalty.

And I also submit that Sections 16-1-121 through 130 do not authorize to fix any interest upon penalty but only to fix interest upon the amount of delinquent taxes.

The sixth one of course is the same, practically the same, as the Court has heretofore ruled on. It is about the application of these taxes contrary to the instructions under which they were paid.

I take the position under "7" that the law does not authorize in the matter of costs an attorney's fee, neither for \$785.14 nor \$100.00, and that that is contrary and can't be allowed in any event in the cost bill.

I also object to the witness fees and mileage of J. B. Mallott. We contend that he was a spurious, unnecessary and voluntary witness and testified to no material or other fact, except, as I recall, he came on the witness stand, and his testimony was that he thought there was another ordinance but he

didn't know when it was enacted. And I submit you can't put a party to cost just to bring in a witness to make a statement of that kind which is not material or relevant or anything else.

I submit it with that statement.

The Court: Does the applicant want to be heard on this?

Mr. Paul: Well, your Honor, just as I [80] glanced quickly at the ordinance, Section 15 does provide for interest.

The Court: Well, what are you looking at now?

Mr. Paul: This happens to be the printed copy of Ordinance No. 1, which came from the '49 Case, the same ordinance as in this case.

The Court: You say it provides for interest on penalties?

Mr. Paul: I would have to look at that and also the statute closely, your Honor, but on the question of interest, whether interest can be charged——

The Court: But interest on what?

Mr. Paul: On the taxes.

The Court: Well, he doesn't challenge that, as I understand it.

Mr. Paul: I think so. That is his Objection No. 4—"Ordinances in effect during the tax years 1950 and 1951 did not provide or fix any rate of interest to be paid upon either delinquent taxes or penalties thereon."

The Court: Well, I understood his statement that he just made as limiting that to the interest on penalties.

Mr. Paul: I didn't take it that way. He has an alternative point—No. 5.

Mr. Robertson: I said the ordinance, your Honor, doesn't fix any rate of interest upon either the tax or the penalty and that the statute does not authorize the fixing of [81] any on the penalty, and that the common council in passing its ordinance didn't fix any rate of interest to levy upon, and that ordinance is in the printed record and in one of the exhibits in this case originally at the trial, and I submit that a careful examination of that ordinance will bear out my statement.

Mr. Paul: Well, for the assistance of the Court, I think that this argument is a little more complicated than I figured, your Honor, and, if I can have until 2:00 o'clock to examine the ordinance closely and the statute, why, we can resolve it then.

The Court: Do you want to submit something at some time in the way of a memorandum, or what?

Mr. Paul: All right.

The Court: Well, how much time do you want?

Mr. Paul: Until 2:00 o'clock will be all right.

The Court: Very well.

Thereafter, and immediately following the foregoing, there was a hearing in cause No. 6581-A, at the conclusion of which the following occurred before the Court recessed:

The Court: Well, then, as I understand it, counsel submit both cases on the statements that have been made here this morning and on the motions that—

Mr. Robertson: And on my briefs, your Honor.

The Court: —have been filed, and [82] objections.

Thereafter on the 29th day of June, 1954, court having convened at 1:30 o'clock p.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; the applicant appearing by William L. Paul, Jr., its attorney; the objectors appearing by R. E. Robertson, their attorney; the following proceedings were had:

Mr. Robertson: I think Mr. Paul had set at this time the objections to the order of sale that I filed in No. 6734-A. That is the one in regard to the tax roll for 1950 and 1951, your Honor, and inasmuch as we had argument on the 24th to the former order of sale that Mr. Paul prepared, I have readopted those objections and made them applicable to this, and I have nothing to say other than I would like to again emphasize that the order of sale contains a 1%, or provides for a 1% upon the delinquent taxes over these various years which, as I contended, that the ordinance does not fix or provide, and it also allows an attorney's fee, and I simply submit those objections in No. 6734-A upon that basis, your Honor.

Thereafter, and immediately following the foregoing, proceedings were had in cause No. 6581-A, at the conclusion of which the following occurred before the Court recessed:

Mr. Paul: Is the Court at this time signing the orders of sale?

The Court: Yes. [83]

Mr. Robertson: I would like to ask, since the

Court will probably be gone before I can get it, I would like to ask Mr. Paul about a supersedeas bond; in No. 6581-A, I think a four-thousand-dollar bond would be sufficient, and in No. 6734-A, a six--thousand-dollar bond.

Mr. Paul: That is satisfactory.

Mr. Robertson: Very well.

Thereafter, on the 27th day of July, 1954, court having convened at 10:00 o'clock a.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; the applicant appearing by William L. Paul, Jr., its attorney; the objectors not appearing; the following proceedings were had:

Mr. Paul: Now, with respect to the two Yakutat cases, No. 6581-A and No. 6734-A, I notice Mr. Robertson's motion for a new trial in both were for 10.00 o'clock yesterday morning, but because of the absence of the Court they were not heard.

The Court: I didn't know there was anything left in those cases.

Mr. Paul: Mr. Robertson informs me that his argument will be very short. I have agreed with him on the telephone to his date of 2:00 p.m., Wednesday. Would that be satisfactory with the Court?

The Court: That is tomorrow?

Mr. Paul: Yes. [84]

The Court: Yes; that will be satisfactory.

Mr. Paul: Thank you. I will inform him.

Thereafter on the 28th day of July, 1954, court having convened at 2:00 o'clock p.m., at Juneau, Alaska; the Honorable George W. Folta, United

States District Judge, presiding; the applicant appearing by William L. Paul, Jr., its attorney; the objectors appearing by R. E. Robertson, their attorney; the following proceedings were had:

The Clerk: The motion for new trial in the two Yakutat cases, No. 6581-A and No. 6734-A.

Mr. Robertson: Also with Mr. Paul's consent, your Honor, in No. 6581-A, the objectors have a motion to amend the minute order of June 29, 1954, so to show that the objections which were stated in their motion of June 23, 1954, to strike applicant's amended duplicate delinquent tax roll for 1949, dated June 23, 1954, were correct in fact but that the City doesn't admit either my legal conclusions in the objections or the validity of the objections, and Mr. Paul says he is agreeable to that minute order being so entered.

Mr. Paul: I am agreeable, your Honor.

The Court: Well, if you agree on it, the minute order may be amended accordingly.

Mr. Robertson: Now, your Honor, I can't see why we can't submit the motions in each of these two cases for new trial at one time. I don't see any necessity of arguing them [85] differently. I admit—I know how expensive these appeals are, and I wish I thought I had some—could persuade your Honor, that the grounds of my motions for new trial are correct, but I have nothing new to argue which I haven't heretofore submitted to your Honor, either orally or by brief, and without limiting myself in any manner I simply again state to your Honor, and

your Honor, in your very brief opinion or memorandum decision in No. 6734-A, stated that the objectors' substantial rights were not affected, and I would like to again emphasize, as I say, without limiting or releasing or discharging my other objections, but I submit, your Honor, that on a special proceedings that a taxpayer's substantial rights are injured when the statutory provisions of such statute in such special proceedings are not followed, and with that I submit the motions, your Honor.

The Court: Well, I don't know that I can tell—what statutory provision is it that you say was not complied with?

Mr. Robertson: Well, they appear in all my objections, your Honor, and Mr. Paul himself made up the supplemental—or what did he call it—the amended, supplemental, delinquent tax roll for 1950 and 1951. I claim there is no such statute at all, if my objections are correct. I contend, your Honor, it is very unfortunate that the City hasn't complied with this statute in any respect in either of these two [86] cases, and I think I have reiterated that to your Honor so many times I realize your Honor is probably sick of hearing me tell about it, and of course I go right back to the original, one of the original bases of our objections in the 1948-1949 tax proceedings, that there was never any assessment made at all, never any assessment made since 1948 of any kind, and I just simply have to stand, your Honor, on my—I just want to again emphasize that, your Honor, to show you my good faith in constantly bringing these things up before the Court.

The Court: Well, of course I can't see why you do it, because, no matter how many times you win, you are eventually going to be defeated.

Mr. Robertson: I don't think so, your Honor.

The Court: Well, you certainly are.

Mr. Robertson: I think your Honor made a serious error there, your Honor.

The Court: So far as assessments are concerned, if that is a typical objection, it seems to be fairly well settled that the City doesn't have to go through the same procedure as in the case of an initial assessment, that they can adopt the assessments made from the first year with such changes as have occurred in the town, and so, if that is illustrative of the other point, why, I can't be influenced much by that point or the other.

Now, I know there have been a lot of [87] irregularities here. There naturally would be. I never thought that Yakutat—I had grave doubts whether Yakutat could ever function as a municipality. The only reason that I allowed Yakutat to become incorporated was because of the failure of the Department of Justice to station a deputy marshal there, and they failed for ten or twelve years, and the people just appealed to me to allow them to incorporate to see if they couldn't bring about some order out of chaos there. I always was very much in doubt whether they could function as a municipality, and it seems that they are having great difficulty, if perhaps they have not failed in incorporating. But, when you have a municipality of that kind, so-organized, it is bound to follow that they are not

going to do any more than substantially comply with even what may be essential and jurisdictional. Have you anything to add?

Mr. Paul: I think your Honor has ruled on these points already. I do want to assure the Court that Yakutat is running its schools up there, paying its bills, saving the Federal Government a great deal of money in that regard, and I think they are doing a good job.

The Court: Well, Mahoney is the one responsible for cutting out the marshal in Yakutat, Hoonah and Craig, and I have had nothing but trouble since. It was a very shortsighted policy in trying to economize on law enforcement. I have no patience with it. I don't know how anything could be more [88] grievously wrong.

Mr. Paul: Yakutat has suffered in that regard. Still, the people, as far as they are concerned, have done the best they can for themselves with their own resources.

The Court: Well, in view of the fact that the motions for a new trial apparently present nothing new, they are denied.

Mr. Robertson: Your Honor, we agreed some time ago that in No. 6581-A, that the supersedeas bond could be four thousand dollars and in No. 6734-A, six thousand dollars, and that, I presume, was satisfactory both as to the supersedeas and the costs.

Mr. Paul: Yes. The supersedeas includes the costs.

The Court: Well, the record will so show.

Mr. Paul: May it please the Court, I notice in

looking over the official file, while the Court has indicated that the order of sale was signed on June 29, 1954, as a fact of the matter, the order has not actually been signed. Would your Honor please sign it now?

The Court: You mean it hasn't been signed yet?

Mr. Paul: No. At least I see a form of order of sale in there that has not been signed. Now, I might be in error but——

The Court: That is in which case?

Mr. Paul: In both cases, I think, your [89] Honor. However, I can assist the Clerk in checking up on that.

Now, we have one further matter in these cases. I have submitted to the Court, and it is in the official file, a form of order of withdrawal of documents deposited with the Clerk. These consist of all the City's official records. I should like to have that signed so that the City can have its records back for purposes of operating its business. I have informed counsel of this and delivered him a form of the order. If counsel desires to examine the records at any future date, they will be available.

The Court: Is there any objection to that?

Mr. Robertson: Just so that in the event that I think it should become necessary in any manner to have these original records in connection with the appeal that the City will send them back over to the custody of the Clerk, if I request it.

Mr. Paul: We agree.

The Court: Well, that will be a matter of record here, his promise to do that.

Mr. Robertson: Very well.

Thereafter on the 30th day of July, 1954, court having convened at 10.00 o'clock a.m., at Juneau, Alaska; the Honorable George W. Folta, United States District Judge, presiding; the applicant appearing by William L. Paul, Jr., its attorney; the objectors appearing by R. E. Robertson, [90] their attorney; the following proceedings were had:

Mr. Robertson: In No. 6581-A, in the Matter of the Delinquent Tax Roll of the City of Yakutat, and also in No. 6734-A, In the Matter of the Delinquent Tax Roll of the City of Yakutat, I have served and filed notice of appeal, your Honor, and present my supersedeas, the one for four thousand dollars and the other for six thousand dollars, and I have submitted them to Mr. Paul.

Mr. Paul: We have no objection to the form of the supersedeas bonds, your Honor.

The Court: And the sufficiency?

Mr. Paul: U. S. F. & G.?

The Court: It has to be both as to the form and the sufficiency.

Mr. Paul: We agree that the U. S. F. & G. is adequate.

(End of Record.) [91]

United States of America,
Territory of Alaska—ss.

I, Mildred K. Maynard, Official Court Reporter for the hereinabove entitled Court, do hereby certify:

That as such Official Court Reporter I reported the above-entitled cause, viz., In the Matter of the Delinquent Tax Roll of Real and Personal Property for the City of Yakutat, Alaska, for the Years 1950 and 1951, No. 6734-A of the files of said court;

That I reported said cause in shorthand and myself transcribed said shorthand notes and reduced the same to typewriting;

That the foregoing pages numbered 1 to 91, both inclusive, contain a full, true and correct transcript of all the foregoing proceedings on the dates herein mentioned in the above-entitled cause, to the best of my ability.

Witness, my signature this 2nd day of October, 1954.

/s/ MILDRED K. MAYNARD,
Official Court Reporter.

[Endorsed]: Filed October 2, 1954.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF
EXTRACT OF PROCEEDINGS

Be It Remembered that on the 10th day of May, 1954, at 10:00 o'clock a.m., at Juneau, Alaska, the trial of the above-entitled cause came on for hearing before the Honorable George W. Folta, United States District Judge; the applicant appearing by William L. Paul, Jr., its attorney; the objectors appearing by R. E. Robertson, their attorney; the following proceedings, among other, were had:

DOROTHY HENRY

called as a witness on behalf of the applicant, being first duly sworn, testified as follows:

Cross-Examination

By Mr. Robertson:

Q. Mrs. Henry, did you bring, in response to my subpoena duces tecum, did you bring the official minutes of the Board of Trustees and the Board of Equalization? [1*]

A. Yes, I have them there.

Q. I want to check with a copy I made.

A. Any particular item?

Q. I want to check a minute. How long have you been in custody of this official minute book, Mrs. Henry? A. June 1, 1953.

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

(Testimony of Dorothy Henry.)

Q. During that time have you or to your knowledge has anyone made any changes or alterations in this book or in its minutes for the period commencing with the first entry on October 2, 1948, page 50, and the entries on page 204 of the book?

A. As far as I know, no one has made any entries.

Q. When did you say you took over?

A. June 1, 1953.

Q. Since June 1st? A. Yes.

Q. Since June 1, 1953, have there been any minutes entered in this book that in anywise directed or attempted to direct the application of the payments that Libby, McNeill & Libby, made on behalf of themselves?

Mr. Paul: Your Honor, I will object to that. That is entirely a matter of proceeding in court, and I have made the commitment, and it is binding. Whether the City actually goes through the formality of adopting a resolution, I think it is wholly immaterial. [2]

The Court: I don't think I got the purport of the question.

Mr. Paul: He is looking for a resolution which, you might say, is to this effect, that of the, say, \$2,400 received from Libby, McNeill & Libby or Bellingham, since the receipt it has been directed to be paid to extinguish the personal property taxes. That is what he is looking for, and I can tell him right now he isn't going to find it because the choice

(Testimony of Dorothy Henry.)

is made as a matter of court procedure. I have done it.

The Court: Then there is no use of looking for it if it isn't there, I presume.

Mr. Robertson: Is that true, Mr. Paul, both for the payment made for the use of 1950 taxes by Libby on behalf of itself and Yakutat and that the Bellingham Canning Company paid for 1951 on behalf of itself and Yakutat?

Mr. Paul: Yes; that is correct. There has been no formal resolution.

Mr. Robertson: And would you also agree that no such resolution or ordinance had been enacted prior to that time?

Mr. Paul: Yes.

Mr. Robertson: Sometime ago, about a year ago last fall, Mr. Paul got this book down for me, your Honor, and at that time I had a copy made of all of the minutes of it, from the page 50 up to and including the then last page, page 204, [3] and I have a copy of those minutes, typewritten copy, which I wonder if you would agree it could be put in evidence?

Mr. Paul: I agree.

Mr. Robertson: They are not certified by anyone except before a notary public, one of my secretaries.

The Court: If he agrees, if he has no objection to it, it wouldn't make any difference.

Mr. Paul: I think counsel gave me one once and I looked it over.

Mr. Robertson: Yes, I think I did.

(Testimony of Dorothy Henry.)

Mr. Paul: I want to preserve the point, however, that—as I recall, those excerpts were directed to show lack of appointment of an assessor, lack of qualification of an assessor that was appointed, show the receipt of a letter of claim by Libby, McNeill & Libby—I am going to preserve my point that I think that those actions do not violate any substantial right of the taxpayer, because, first, the board acted as its own assessor, which they can do; they don't have to have someone specially appointed; and, secondly, in so far as the receipt of the money upon condition, that is the old compromise idea and is not binding on the city at all.

The Court: You object then to the—to what?

Mr. Paul: To the excerpts; and they aren't going to go prove anything in the case. I admit that they are true copies. [4]

The Court: Well, but it seems to me that, if you agree, for instance, that a tax assessor was or was not appointed, that is all you need; then you don't have to have any documentary evidence of that if you can stipulate.

Mr. Robertson: I didn't hear that.

The Court: I say, if you can agree on whether an assessor was or was not appointed, then it is not necessary to introduce any records of this kind.

Mr. Robertson: I didn't know Mr. Paul would so agree. Will you agree that these minutes show that there was no assessor appointed for the tax year commencing June 1, 1951, that the board itself acted, although Ordinance No. 1 at that time had

(Testimony of Dorothy Henry.)

not been amended for the City of Yakutat, also that the same tax assessment for the tax year 1950 was simply adopted for the same tax year, the same tax valuation for the tax year 1949 was adopted pro forma for the tax year commencing June 1, 1950, and that there was no assessor appointed, at least until after the council had acted, when Mr. Williams was apparently appointed sometime late that fall.

Mr. Paul: Yes, we so stipulate, your Honor. The board acted as its own assessor.

Mr. Robertson: Both years?

Mr. Paul: Both years.

The Court: 1950 and 1951?

Mr. Paul: Yes. [5]

The Court: The years involved here?

Mr. Paul: Yes; the years involved here. That is what is reflected on Plaintiff's Exhibit No. 2.

Mr. Robertson: And that they simply used the same tax valuation for the tax year June 1, 1950, as they had used for the tax year June 1, 1949?

Mr. Paul: It was carried on, yes; the identical figures. Well, no; just a moment. Oh, '48. No; it was fixed at \$281,000 in 1949, and that was carried over in '50 and '51.

Mr. Robertson: Now, Mr. Paul, will you stipulate it is true, as the Court has ruled, that these points are not jurisdictional, but I would like to present evidence or at least make an offer of evidence, and it will be easiest and quickest if Mr. Paul will agree to it; I don't know whether he will

(Testimony of Dorothy Henry.)

or not; but there was—that the Board of Trustees of the City of Yakutat did not officially or by any recorded records of official action designate the assessor or any other official of the city to post any notice for the presentation of this particular delinquent tax roll to this Court?

Mr. Paul: Your stipulation goes to a special appointment, appointment by a special document?

Mr. Robertson: That there is no official record in your minute book of any such designation by the Board of Trustees or anyone to post, or any notice of presentation of this delinquent tax roll. [6]

Mr. Paul: The only official record will be that item which shows the adoption of Ordinance No. 1.

Mr. Robertson: What?

Mr. Paul: The only item appearing in the minute book will be the record showing the filing and approval of Ordinance No. 1, in so far as appointing anyone to post a notice.

The Court: Well, you mean there is a general provision in that ordinance?

Mr. Paul: Yes; authorizing the clerk.

Mr. Robertson: Well, Mr. Paul, this book does not, if my memory serves me right, does not show the adoption of Ordinance No. 1, but will you stipulate with me that true and correct copies of Ordinance No. 1 and No. 2, are in the printed record in the former case?

Mr. Paul: Yes.

Mr. Robertson: You agree now that is the only

(Testimony of Dorothy Henry.)

official action of designation of any assessor or anybody else to give notice of presentation of your Exhibit 1 to this Court?

Mr. Paul: Yes, in so far as these two tax years are concerned.

Mr. Robertson: In so far as what?

Mr. Paul: In so far as the present proceeding, the two tax years.

Mr. Robertson: And that you did not publish in any daily or weekly newspaper in the City of Juneau, Alaska, or [7] elsewhere, as required by Section 10 of the City's Ordinance No. 1, a notice that the Board of Trustees had fixed the rate of tax levy for either the tax years 1950 or 1951, designating the number of mills fixed on each dollar of assessed value of the property assessed, and that the taxes were then due and would be delinquent on or before the 15th day of September of either of said tax years 1950 or 1951.

Mr. Paul: That is right.

The Court: Now, you are reading from one of your objections, I presume.

Mr. Robertson: Yes, your Honor.

The Court: Just give me the number of that.

Mr. Robertson: I first read from my Objection No. 1.

The Court: I mean this last one.

Mr. Robertson: This is Objection No. 2, your Honor. And the third is that there is no official action indicated in the record book or minute book of any kind of the Board of Trustees designating

(Testimony of Dorothy Henry.)

the place where or the date when this delinquent tax roll, Exhibit 1, should be presented to this Court.

Mr. Paul: Right.

Mr. Robertson: That is No 3, your Honor. No. 4, that the City's Board of Trustees did not in any manner direct the time when said delinquent tax roll should be made up; no official tax record of that. [8]

Mr. Paul: No. That is right.

Mr. Robertson: Will you further stipulate to Objection No. 9, that neither the City's clerk nor any of its officers within ten days after posting of said notice, or at all, mailed to the Bellingham Canning Company, to whom the real property by said delinquent tax roll purportedly is assessed and whose last known and present address is and was known to said clerk and City to be Yakutat, Alaska, or to either Yakutat & Southern Railway or Libby, McNeill & Libby, although both of their last known and present addresses are and were well known to said clerk and City, or otherwise, notwithstanding neither City nor any of its officers published any notice in any newspaper whatsoever? Now, would you agree to that?

Mr. Paul: Well, your idea is that within ten days after the posting of the notice we did not mail a notice to Bellingham?

Mr. Robertson: That is right; or, if you did publish it in some other newspaper of which we have no knowledge, and it is now admitted you haven't, you didn't mail any.

(Testimony of Dorothy Henry.)

Mr. Paul: The only notification we gave was the posting of the notice, one of which was on this property involved here.

Mr. Robertson: That is the only notice you gave?

Mr. Paul: That is the only notice.

The Court: Well, then, am I to understand [9] that Objection No. 9 has been admitted?

Mr. Paul: Well, your Honor, one of the notices themselves was right on this piece of property which is the subject of taxation here.

The Court: Well, then you better restate the qualification of this objection, that the only notice was given—what?

Mr. Paul: By posting notices, one of which was on the property. There was no mailing, and there was no personal delivery, except that the notice was on the property. There was no mailing, and there was no publication in a newspaper.

The Court: But, as I understand it, there was the posting of notice on one of the properties, is that what you said, or the properties of one of the parties?

The Court: One of the notices on the property about which we are involved here.

Mr. Robertson: Pardon me just a moment.

Mr. Paul: Did you bring the ordinance book?

Mrs. Henry: No. It is over in the hotel. I didn't think you wanted it.

Mr. Robertson: In May, 1953, Edward G. Johnson in his sworn amended answers to Objectors' Interrogatories said in answer to Question 56—

(Testimony of Dorothy Henry.)

“Identify each building that is included in or intended to be covered by the words ‘frame buildings \$176,625.00’ [10] in said item mentioned in Interrogatory No. 54.” Answer: “The item ‘frame buildings \$176,625’ are those buildings appearing on the land now owned by Bellingham Canning Company. The same segregation was made as appears in the evidence in that certain cause entitled ‘In re Yakutat Delinquent Tax Roll for 1948-1949.’ ” I offer that in evidence.

Mr. Paul: O. K. No objection.

Mr. Robertson: That is Mr. Johnson’s amended sworn answer, your Honor, under date of May 8, 1953, to Objectors’ Interrogatories of November 21, 1952.

The Court: It will be admitted.

Mr. Robertson: Now, as I understand, at the outset here counsel agreed, or else I misunderstood him, that we would testify for the tax year commencing June 1, 1950, the actual, fair, cash value of Libby, McNeill & Libby’s property was \$49,100 and of the Yakutat & Southern Railway was on that date \$106,200.

Mr. Paul: Do you say, will I stipulate that we will testify to that?

Mr. Robertson: Yes. Is that what you said you would stipulate to, or not? I thought when you started out and the Judge asked you about it—if you won’t——

Mr. Paul: Oh, yes. I wasn’t getting at exactly that idea, but I will stipulate that is what they

(Testimony of Dorothy Henry.)

claim and that they claimed that when they appeared before the Board of [11] Equalization.

The Court: Is that embodied in one of your objections?

Mr. Robertson: Yes, your Honor.

The Court: What number is that?

Mr. Paul: The defense that I stated originally when we began this hearing this morning was that that amount was not supported by any evidence before the Board of Equalization and that a mere claim is not enough to exhaust the administrative remedies. That was what I started out by saying this morning. But I will stipulate that they made that claim.

Mr. Robertson: Well, we will offer evidence of it.

The Court: Well, you don't have to if he is willing to stipulate it.

Mr. Robertson: He is willing to stipulate we make that claim. I will offer evidence to that effect.

The Court: To the effect that you made such a claim?

Mr. Robertson: I was going to put witnesses on to testify to these values, but the Court said to start out with, he was trying to shorten this, and I was wondering whether or not he would admit that, if I called witnesses, they would testify to these values. That is what I was trying to get at.

The Court: Well, I think this stipulation is about enough to cover that, isn't it? The stipulation that the claim was made that the value was so and so seems broad enough to include the testifying

(Testimony of Dorothy Henry.)

thereto of witnesses. But, now, that is [12] embodied in Objection——

Mr. Robertson: That is embodied in Objection 10, your Honor, showing the value of railroad property for each of those two years, real property, which includes land and buildings, was \$99,000, and its personal property for each of those two years was \$7,200, and that Libby's personal property for 1950 was \$49,100 and Bellingham Canning Company's for 1951 was \$76,603. I don't presume a stipulation is necessary to this because they have already answered the Objectors' Request for Admissions under Rule 36. They have answered affirmatively to Requests 22, 23, 24 and 25 and 26, which is where I set out the letters where we paid the checks on those two years, your Honor, and also where they accepted the checks, I mean, taken the checks and cashed them and never made any refund of any amount of it. So, I will offer those in evidence.

Mr. Paul: No objection.

The Court: They are received in evidence.

Mr. Robertson: As I understand, Mr. Paul, since we agreed, stipulated, that the Bellingham Canning Company bought out Libby, McNeill & Libby, on May 5, 1951, that it might be possibly from that inferred, implied—we definitely stipulated on June 1, 1950, the Bellingham Canning Company did not own any of the real property for the tax year 1950—they didn't acquire any ownership of any of it until May 5, 1951.

(Testimony of Dorothy Henry.)

Mr. Paul: Yes; that is right. [13]

The Court: Well, you better restate that.

Mr. Robertson: Well, I asked counsel to stipulate that on June 1, 1950, the objector Bellingham Canning Company owned no personal or real property situated within the city limits of the City of Yakutat, and that its interest in this property was not acquired until May 5, 1951, when it purchased Libby's interest therein.

Mr. Paul: Right. Yes.

Mr. Robertson: Will you also stipulate that the Bellingham Canning Company at the time of purchase on May 5, 1951, paid \$120,000 to Libby, McNeill & Libby, for all of the physical assets within the City of Yakutat, such as land, buildings, stock, equipment, or machinery, equipment and things of that kind, from which, upon which was given a credit of \$20,000 as covering the purchase price of railroad trackage and other properties outside of the city limits and that in addition the Bellingham Canning Company paid Libby \$80,000 for inventory of stock, like merchandise and stores on hand.

Mr. Paul: I so stipulate. Of course now we are getting into counsel's case.

The Court: I don't understand what that credit of twenty thousand was given for.

Mr. Robertson: That was put in a negative way, but the \$20,000 covered the property outside of the town, railroad tracks and things of that kind, your Honor. In other words, [14] they actually paid one hundred and eighty thousand for what was in the

(Testimony of Dorothy Henry.)

town, which also included the Libby stock in Yakutat & Southern Railway.

Mr. Paul: Is counsel through with the witness?

Mr. Robertson: Well, I rather think I am, your Honor, but I called her down here, and, as I go through here, I am trying to get this all in here and get this case closed up, your Honor. May I call her back, if necessary, after she steps down?

The Court: It seems to me what is going on now appears to be in support of the defense, which ordinarily wouldn't be put in until after the City rested.

Mr. Robertson: Well, we got started off on this in this manner, your Honor. I agree with you. I had anticipated I would have to call Mrs. Henry to prove some of these things.

The Court: It is all right if he is through with his case.

Mr. Robertson: I brought her down with these records, but any time anything occurred to me, Mr. Paul seemed willing to stipulate, so I haven't asked very many questions.

The Court: It doesn't make much difference; except, are you going to rest with this witness?

Mr. Paul: I have just one or two more [15] questions.

Redirect Examination

By Mr. Paul:

Q. Mrs. Henry, the ordinance book, you stated, is down at your hotel room? A. Right now.

(Testimony of Dorothy Henry.)

Q. Do you know whether the City has adopted an ordinance with respect to posting the delinquent tax roll in place of advertising it in a newspaper?

Mr. Robertson: I think the ordinance is the best evidence, your Honor.

Mr. Paul: First, is there such an ordinance; then I will ask her to produce it.

A. I would rather not answer that question, because I don't know fully all the ordinances.

Q. Well, you look over the ordinance book and see if there is anything like it and then bring it up here, will you please?

A. Do you want it right now? I can get it right now.

Q. I guess after lunch would be all right.

Mr. Paul: That is all. The applicant rests. You may step down now.

• Mr. Robertson: Well, this is before the Court itself, but on my motion, your Honor, based upon those various statements heretofore that the application be dismissed, your Honor, they have proved none of the necessary jurisdictional [16] action required before it could be presented to the Court, that it is *res adjudicata* under the decisions of the Appellate Court in the 1948 and 1949 tax appeal case, and also that that case is also the rule of law governing this case as to the delinquent tax roll.

The Court: Well, the ruling is the same, or, I mean, the ruling will be reserved on it.

Mr. Robertson: I think that is our case, your

Honor. Since Mr. Paul is going to call Mrs. Henry back at 2:00 o'clock and since I have been trying to go pretty fast here, I wonder if I could just reserve my conclusion, as to whether I am through, until 2:00 o'clock and have time during the lunch hour to think it over.

The Court: Very well.

Mr. Paul: All Mrs. Henry will do is produce that ordinance if there is one.

The Court: Very well.

Mr. Robertson: I guess I will have to call probably both Mrs. Welsh and Mr. Bristol, your Honor, at least as to appearing before the Board of Equalization in the fall of 1951, and presenting their valuations at that time and that nobody asked them to be sworn or anything else. They were there and appeared personally and gave those statements.

The Court: Well, isn't that already covered by the stipulation? [17]

Mr. Paul: We admit they appeared before the Board and they presented such evidence as they wanted. It is true it was quite informal, but it looks all right to me. My objection to that line of evidence is that there is no showing of an invasion of a substantial right that this Court can consider. That is the only jurisdiction this Court has to consider. It has got to be some special act that has been overlooked by the Board, as in the Chilkoot Case. Counsel has not yet met the issue.

The Court: That is a matter of argument.

Mr. Robertson: Then I think we are through, your Honor, but I would like to have until 2:00 to think it over, but I don't think there will be anything further as far as we are concerned.

The Court: Very well. Court is recessed until 2:00 o'clock.

Whereupon Court recessed until 2:00 o'clock, p.m., reconvening as per recess, with all parties present as heretofore, and the trial proceeded as follows:

Mr. Robertson: I will take only a few minutes. Mr. Paul stipulated this morning that Mrs. Welsh and Mr. Bristol both appeared before the Board of Equalization and testified, and what I would like to also get in that stipulation, if he is agreeable to it, that none of the Board of Trustees or Board of Equalization or anyone asked them to be sworn under [18] oath. There was no question that they were perfectly willing to have given that testimony under oath if they had been asked to.

Mr. Paul: That is right. We will so stipulate.

Mr. Robertson: And that the cannery was not operated after the end of the 1948 salmon fishing season until in 1951 after Mrs. Welsh and her interests had taken over the plant. In other words, it was not operating in 1949 or 1950. That was testified to, and I have got evidence also of that.

Mr. Paul: That is true, and also I think that, although counsel is going to use evidence in this other case, we should include in that that Libby intended to operate in 1950 but did not actually complete its intention of operating. I think that is in the evidence.

Mr. Robertson: I couldn't agree with that. That isn't in the testimony. They didn't have any plans to operate in 1950. They had some deal on for a

while with Whizz Fish Company, which was going to do something of that kind.

The Court: Is it material anyhow?

Mr. Paul: Oh, I don't think so, your Honor.

Mr. Robertson: Then, I would like to offer and get definitely in evidence, your Honor, Mr. Edward G. Johnson's Answers 1, 2, 3 and 4 to the—it is his Amended Answers of May 8, 1953, to Objectors' Interrogatories of November 21, 1952, and also his answers to—amended answer to Interrogatory [19] No. 31, the same date—of course it was the answers—and also to Mr. Paul's—Mr. Paul, himself, personally made the first answers, and also Mr. Paul's Answers 31 and 33 to the Interrogatories. Mr. Paul also personally on behalf of the City made the Answers to the Requests for Admissions, and I would like to put into that the Answers and Requests 1, 2 and 3. And I think Mr. Paul will admit this—it is in some of these answers to questions—that ordinance, that Ordinance No. 1 was in effect throughout the tax years 1950 and 1951 and was not amended until sometime in the year 1952.

Mr. Paul: Yes, that was true, except, in so far as the posting provisions were concerned, it isn't mandatory for it to take advantage of the statute, to permit posting in certain cities where there are no newspapers, and that ordinance had been adopted prior to the time of the posting of the notice in this case.

Mr. Robertson: Could you point me out that ordinance? Your answer said it hadn't been

amended, one of these answers, and I was relying on that.

Mr. Paul: Probably I had reference to the time when taxes were due to be paid. There has been a recent amendment on that. I am looking through the ordinance book now, but I don't find the official copy.

Mr. Robertson: I made this request, your Honor, for admissions, "Applicant's Ordinance No. 1 was in effect throughout tax years 1950 and 1951." That was Request for Admissions [20] No. 21, and Mr. Paul, who made the answers on behalf of the City, answered that with the simple answer, "Yes." So, I would like to offer that in evidence, your Honor.

The Court: Well, is that one of the responses that you referred to as 1, 2 and 3 a short time ago?

Mr. Robertson: No, your Honor. This is Mr. Paul's Answer No. 21 to my Request for Admissions of November 21, 1952. His Answers to Requests were made on December 22, 1952.

The Court: Then am I to understand that the previous stipulation, the stipulation as to the preceding item, is to be expanded to include the fact that there was an ordinance adopted permitting the publication to be made by posting?

Mr. Paul: Apparently counsel doesn't agree on that point, so I omitted to have the former mayor testify as to its adoption and furnish him a copy.

Mr. Robertson: I am relying on Mr. Paul's answer.

The Court: If you have got the ordinances here, there shouldn't be any dispute over it.

Mr. Paul: No. I have to dig it out of my personal files and have the ex-mayor identify it as being approved. It is not final authority.

Mr. Robertson: I would like to have counsel's Answer 21 to my question then put in evidence. This is 21 in the Request for Admissions.

The Court: Maybe you better call your witness in [21] rebuttal then.

Mr. Paul: Yes, indeed.

Mr. Robertson: And in connection, your Honor—well, I suppose that is a question of argument. I think that is all, your Honor.

Mr. Paul: You mean you are resting, counsel?

Mr. Robertson: Yes.

J. B. MALLOTT

called as a witness on behalf of the applicant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Paul:

Q. Your name is J. B. Mallott?

A. Yes, sir.

Q. And you were formerly mayor of the City of Yakutat? A. I was.

Q. Do you ever recall any occasion when the Board of Trustees considered or adopted an ordinance to provide for the posting of notice of delinquent tax roll in lieu of publication in a newspaper?

A. Yes. I recall that I brought it to your attention that it was an expensive deal of publishing all of this in a newspaper when very few up there took the newspaper, and you drew up an ordinance which

(Testimony of J. B. Mallott.)

I presented to the council, and to the best of my memory it was passed. [22]

Q. Do you recall the date? A. No.

Q. Do you recall whather it was before or after August 9, 1952?

A. It was shortly after the last case in court.

Mr. Robertson: What was your answer?

A. I say it was after the last case, when all the publication and trouble, when it was brought up, the 1948-1949 case.

Mr. Paul: That is all.

Mr. Robertson: Well, your Honor, I don't think that is the best evidence in view of counsel's statement that there were none, and I submit, your Honor, that the minute book, which was produced here, that is the best evidence that there is no such thing entered. In one of these answers they testified that that is the official record. I submit that is the best evidence.

Mr. Paul: I don't think that has been the ruling of the Court.

The Court: Would the ordinances be in the minute book?

Mr. Robertson: One of these witnesses, the City Clerk, said they were supposed to be complete.

Mr. Paul: There is a separate book, but we have examined it, your Honor, but we don't find several of the ordinances. [23]

The Court: I don't think I can sustain an objection made on the fact that the ordinance isn't in a certain book.

Mr. Robertson: No; but the further testimony, your Honor, his testimony is not the best evidence of an order. He doesn't know the date. I have counsel's statement, dated December 22, 1952.

The Court: It may be that it isn't the best evidence, but you didn't object to the question.

Mr. Robertson: I tried to object to it as soon as I could hear what the question was, with all these jets flying around here.

The Court: Your objection came after he had answered.

Mr. Paul: I take the position that our response to the question—was Ordinance No. 1, in existence for all this period—doesn't have anything to do with a minor amendment made shortly before this notice with which we are concerned.

The Court: But that isn't the basis of his objection. There is no party precluded from introducing two items of evidence, one which happens to contradict the other or is inconsistent with it. That happens in nearly every case.

(End of this record.) [24]

United States of America,
Territory of Alaska—ss.

I, Mildred K. Maynard, Official Court Reporter for the hereinabove entitled Court, do hereby certify:

That as such Official Court Reporter I reported the above-entitled cause, No. 6734-A of the files of said court;

That I reported said cause in shorthand and myself transcribed said shorthand notes and reduced the same to typewriting;

That the foregoing pages numbered 1 to 24, both inclusive, contain a full, true and correct transcript of all the above extract of proceedings at the trial of the above-entitled cause, to the best of my ability.

Witness, my signature this 28th day of May, 1954.

/s/ MILDRED K. MAYNARD,
Official Court Reporter.

[Endorsed]: Filed June 8, 1954.

[Title of District Court and Cause.]

DOCKET ENTRIES IN No. 6734-A

Oct. 15, 1952—Application filed.

Sept. 9, 1952—Objections of Yakutat & Southern Railway, Libby, McNeill & Libby & Bellingham Canning Co.

Nov. 6, 1952—Notice of taking of Depositions under Rule 30, filed.

Nov. 7, 1952—M/O Court signed Order for Sale of Real property and allowed \$250 atty. fee—above order filed and entered.

Nov. 10, 1952—Cost Bill filed.

Nov. 21, 1952—Interrog. propounded by Objectors to applicant under Rule 33 filed.

Nov. 21, 1952—Objectors Request under Rule 36 for Admissions by applicant filed.

Nov. 28, 1952—Objectors Petition filed.

Dec. 2, 1952—Notice of taking Deposition filed.

Dec. 2, 1952—Direct Interrog. propounded by objectors to Harold G. Heaton filed.

Dec. 2, 1952—Motion Objectors for Production of Documents etc. filed.

Dec. 17, 1952—Dep. of Harold G. Heaton filed.

Dec. 17, 1952—Objectors notice of filing of H. G. Heaton's deposition filed.

Dec. 19, 1952—Motion for Extension of Time (Pltfs).

Dec. 19, 1952—M/O Court granted Objectors Motion for production of Documents.

Dec. 22, 1952—Applicant's Answer to Obj. Interrog. of 11/21/52 filed.

Dec. 22, 1952—Applicant's Answer to Request for Admission filed.

Dec. 24, 1952—Objectors Motion to Strike filed.

Dec. 29, 1952—M/O Hearing on Objectors Motion for entry of Judg., etc., see minute order 12/29/52.

Jan. 7, 1953—M/O Objectors Motion to suppress applicants ans. to objectors Interrog. filed.

March 27, 1953—M/O Court sustained Objectors Motion to suppress Applicants Ans., etc., except as to Ans. No. 4. Respondent granted 2 weeks to respond.

May 11, 1953—Applicant's amended Ans. to Objectors Interrog. of 11/21/52 filed.

March 4, 1954—Pltf's. motion for trial filed.

April 23, 1954—M/O Court set hearing for April 28th.

April 26, 1954—Affidavit on Motion for Summary Judgment & Judgment on pleadings filed.

April 28, 1954—After hearing on motions for Summary Judgment and to set for trial—matters taken under advisement.

April 30, 1954—M/O After hearing arguments on motions court ruled said motions for Judgment would be denied.

May 5, 1954—Subpoena Duces Tecum issued.

May 8, 1954—Marshal's Return on above filed (5-6-54).

May 8, 1954—Subpoena Duces Tecum issued for Dorothy Henry.

May 10, 1954—M/O Case on trial. Briefs to be filed. Each side to have 10 days and a further 5 days for Reply Brief if found necessary.

May 12, 1954—Applicants Brief Filed.

May 26, 1954—Objectors Brief filed.

May 27, 1954—Objectors Supplemental Brief filed.

June 1, 1954—Applicants Reply Brief filed.

June 8, 1954—Reporter's Transcript of Extract of Proceedings filed.

June 8, 1954—Case file sent to Judge at Anchorage.

June 16, 1954—M/O Memorandum Opinion signed and filed.

June 18, 1954—Cost bill filed.

June 24, 1954—Objections to Findings of Fact, Conclusions of Law, Order of Sale and Cost bill filed.

June 24, 1954—M/O Case came on for hearing—Objectors filed Objections to Findings of Fact, Conclusions of Law, Order of Sale and Cost Bill.

June 24, 1954—Court granted pltf. until 2 p.m. to submit authorities on objections.

June 25, 1954—M/O Court ruled that the objections of the taxpayers to the allowance of interest and penalties and of a fee to the City Clerk are sustained and all other objections are overruled.

June 28, 1954—Objectors objections to Order of Sale filed.

June 29, 1954—M/O Hearing on Objections to order of sale—following which court signed Order of Sale—stipulated that amount of supersedeas Bond be \$6,000.00.

June 29, 1954—Order filed and entered.

July 2, 1954—Motion for New Trial filed.

July 6, 1954—Affidavit of service by mail filed.

July 13, 1954—Applicants Notice of Attys Claim of lien filed.

July 21, 1954—Notice of hearing by applicant on objectors motion for new trial filed.

July 27, 1954—M/O Hearing on Motion for new trial—case set for 2 p.m., Wednesday, July 28th.

July 28, 1954—M/O Objectors Motion to amend M/O of 6/30/54 after argument court denied motion for new trial.

July 30, 1954—Notice of Appeal to the U. S. Court of Appeals for the 9th Circuit under Rule 73 (b) filed.

July 30, 1954—Supersedeas on Appeal filed.

July 30, 1954—M/O Court approved & Appeal

allowed & Order of Sale stayed this 30th day of July. Order filed and entered.

Sept. 3, 1954—Order extending time to Docket Appeal filed.

Aug. 31, 1954—Court signed Order extending time for filing appeal until Oct. 10, 1954.

Aug. 31, 1954—Order extending time to file and docket appeal filed and entered Oct. 2, 1954. Reporter's Transcript filed.

Oct. 4, 1954—Praecipe for Appeal Record filed.

Oct. 6, 1954—Motion for Order extending time to file and docket Appeal filed.

Oct. 6, 1954—M/O Upon consideration of above the Court signed Order extending time to file and Docket Appeal.

Oct. 6, 1954—Order above filed and entered.

[Title of District Court and Cause.]

United States of America,
Territory of Alaska,
Division Number One—ss

CLERK'S CERTIFICATE

I, J. W. Leivers, Clerk of the District Court for the Territory of Alaska, First Division thereof, do hereby certify that the hereto-attached pleadings are the original pleadings and Orders of the Court filed in the above-entitled cause and are the ones designated by the parties hereto to constitute the record on appeal herein.

In Witness Whereof, I have hereunto set my hand and caused the seal of the above-entitled court

to be affixed at Juneau, Alaska, this 21st day of October, 1954.

J. W. LEIVERS,

Clerk of the District Court.

By /s/ P. D. E. McIVER,

Chief Deputy Clerk of Court.

[Endorsed]: No. 14561. United States Court of Appeals for the Ninth Circuit. Yakutat & Southern Railway, a Corporation; Libby, McNeill & Libby, a Corporation, and Bellingham Canning Company, a Corporation, Appellants, vs. The City of Yakutat, Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, Division Number One.

Filed October 25, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals for the
Ninth Circuit.

No. 14561

YAKUTAT & SOUTHERN RAILWAY; LIBBY,
McNEILL & LIBBY, and BELLINGHAM
CANNING COMPANY, Each a Corporation,

Appellants,

vs.

CITY OF YAKUTAT, ALASKA,

Appellee.

APPELLANTS' STATEMENT OF POINTS

1. The rule of law laid down by this Honorable Court in its Cause No. 13455, Libby, McNeill & Libby, a corporation, and Yakutat & Southern Railway, a corporation, Appellants, versus City of Yakutat, Alaska, Appellee, announced in its written Opinion of July 17, 1953 (reported, 206 F.2d 612), which Opinion and this Honorable Court's Mandate, issued in accordance therewith on August 19, 1953, are res judicata herein and the law of this cause.

2. The preponderance of the evidence proved that Appellants' properties were over-valued and over-assessed for each of the tax years 1950 and 1951 and were of the true and full value during those two years as claimed by Appellants, and for neither of those years were the taxes on Appellants' properties fairly assessed or equalized.

3. Appellee did not prove, nor did the trial Court require Appellee to prove, that it had done any of the jurisdictional acts required in these special proceedings by Sections 16-1-121 through 16-1-126, ACLA 1949, in that Appellee's trustees did not officially designate the city assessor or other official to give the notice required by Section 16-1-122, officially direct either the publishing or posting of that notice, officially designate the place where or the date when the application would be made, or officially designate the dates and period either of publishing or posting that notice.

4. No assessment was made for either the tax years 1950 or 1951 by the city assessor, or otherwise, although the Municipal Ordinances then in effect required the assessment to be made by the city assessor, and the trustees, if they did anything, simply unofficially adopted the valuation in substantial effect that had been used during the tax year 1949 during and for which year the city assessor had made no assessment, and for which tax year of 1949 the trial court in effect had unlawfully appointed and constituted itself assessor and assessed Appellants' properties at \$283,630.00.

5. The taxes were assessed against the Bellingham Canning Company for the tax years 1950 and 1951, although it owned none of the property until May 5, 1951, and then none of the realty but only the personalty.

6. No taxes were duly levied for either tax year 1950 or 1951.

7. No taxes were assessed against either Libby, McNeill & Libby or the Yakutat & Southern Railway for the tax years 1950 and 1951, although the former owned the personalty until May 5, 1951, and the latter during both years owned the realty as Appellee at all times knew.

8. Notice of presentation of the duplicate delinquent tax roll was neither published nor posted as required by either the law or the municipal ordinances.

9. The judgment allowed interest upon penalty, notwithstanding the municipal ordinances did not require or provide for the payment of interest upon penalty.

10. The duplicate delinquent tax roll, Exhibit 1, did not segregate taxes upon personalty from those upon realty or segregate the ownership of either personalty or realty, and affords no means of computing taxes upon the two classes of property or as to the three different ownerships.

11. Aliunde evidence was admitted, i.e.: Dorothy Henry's deposition and page 5 of purported assessment book, Exhibit 2, to modify, amend, and alter the duplicate delinquent tax roll, Exhibit 1.

12. Computation of segregated taxes upon personalty and realty was based upon aliunde evidence, i.e.: Dorothy Henry's deposition and page 5 of purported assessment book, Exhibit 2, not upon the duplicate delinquent tax roll, Exhibit 1.

13. The judgment allowed an attorney's fee contrary to law.

14. Payments made by the respective Appellants in full of their respective taxes at the true and full value thereof, which payments were received, retained, and not returned by Appellee, were applied contrary to Appellants' instructions which accompanied the payments in such manner as to satisfy the personal property taxes at Appellee's claimed valuations and to leave unsatisfied the real property taxes at Appellee's claimed valuations.

Dated at Juneau, Alaska, October 22, 1954.

/s/ R. E. ROBERTSON,
Of Attorneys for Appellants.

Affidavit of mail attached.

[Endorsed]: Filed October 25, 1954.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Appellants hereby designate, for inclusion in the record on appeal, the District Court's complete record, including all docket entries and all the proceedings and evidence, including all exhibits, in this action, including the Court Reporter's complete transcript of record, but omitting therefrom Subpoena duces tecum, with service return, to Dorothy Henry; Applicant's Brief (filed May .., 1954);

Amendment to Applicant's Brief; Applicant's Reply Brief; Objectors' Brief and Supplemental Brief; Notice of Attorney's Lien, dated July 13, 1954; Applicant's Memo and Praeceptum in District Court for Appeal Record, and without duplication of Reporter's transcript of May 10, 1954, but including, if it is necessary to be printed in the Printed Appeal Record in this cause in order to be considered herein, Excerpt from Objectors' Brief, pages 32 and 33, also Affidavits of Humphrey and Humphrey and Fleming, pages 34 to 37, also the Reporter's Transcript, pages 60 to 79, also Municipal Ordinances 1, 2, and 8, Exhibits A, B and C, pages 85 to 105, Interrogatories to and Answers, Amended and Further answers of Defendants, Defendants' Requests for Admission and Plaintiff's Objections thereto, pages 113 to 157, the Trial Proceedings, pages 173 to 319, of the printed record heretofore submitted to this Honorable Court in its cause No. 13,455, because the trial Court by its order of June 29, 1954, stated that all of the evidence in its cause No. 6581-A (Appellate Court Cause No. 13,455) would be considered in the trial Court's cause No. 6734-A. which is this cause.

Dated at Juneau, Alaska, October 22, 1954.

/s/ R. E. ROBERTSON,

Of Attorneys for Appellants.

Affidavit of Mail Attached.

[Endorsed]: Filed October 25, 1954.